

MINUTES
FORT MYERS BEACH
Local Planning Agency

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

Tuesday, November 9, 2010

I. CALL TO ORDER

Meeting was called to order at 9:04 AM by Joanne Shamp. Other members present:

Bill Van Duzer
Joe Kosinski
John Kakatsch
Carleton Ryffel
Hank Zuba
Rochelle Kay

LPA Attorney Marilyn Miller

Staff present: Terry Stewart, Town Manager; Community Development Director Walter Fleugal.

II. PLEDGE OF ALLEGIANCE and INVOCATION

Ms. Kay

III. INTRODUCTION

Mr. Stewart introduced the new Community Development Director to the LPA.

IV. MINUTES

A. Minutes of October 12, 2010

Motion: Mr. Kosinski moved to accept the minutes, as recorded.

Seconded by Mr. Ryffel;

A few spelling corrections were noted and corrected.

Vote: Motion passed 7-0.

V. ADMINISTRATIVE AGENDA

A. Draft Information Regarding Signs

Ms. Shamp gave brief synopsis as to the progression of this matter and Ms. Miller addressed the meeting. She said she reviewed this taking extra care in the area of constitutionality as it pertains to signs because it is an expression of speech and there were things in the historical signs area that didn't need to be there. She referred to

other slight changes (see draft) she addressed in the draft and said she tried to keep most of the provisions the same as the original ordinance. She added that it is important to have the Code Enforcement officers give input for this ordinance.

Mr. Fleugal said he spent time with Mr. Ryffel and they worked closely on this project to be sure they looked at everything. He asked for the LPA input and discussion.

Mr. Ryffel passed out photos he took to the members. He suggested that the sections dealing with dimensions be deleted and asked the attorney what the term "content neutral" means. Mr. Ryffel then referred to Sec. 5, dealing with "monument signs," and Sec. 6, "pole signs," and suggested that Sec. 5 should be taken out or revised. He added that most of the signs in the town are "pole signs" and these are restricted by height and width requirements; this needs to be changed. There were a few spots in the draft that are stricken out and he asked for clarification on these. (Long pause for review of paperwork and photos and to copy/distribute copies).

Mr. Van Duzer suggested that there be more time for all members to thoroughly review the draft before going much further, especially since there were pages missing from the members' packages. Ms. Shamp agreed and brought up the Christmas tree ornaments, reminding everyone that the newest members are required to create an ornament for the tree.

Mr. Ryffel referred to the section regarding signs painted on structures, asking the attorney for a definition of "structure" since this may be different in the county ordinance. Discussion ensued about billboards and other "off-premise" signs.

Mr. Ryffel asked if there is a provision for a variance for roof signs and, learning that there is not, gave an example of a hardship for which he believes there should be a special exception. There was also discussion about posting of signs and the definition of "posting of property" and requirements for posting numbers on the buildings. Mr. Ryffel also commented on several other sections, asking for clarification of definitions and practicality of certain types of placards and nameplates, with dimensions specified in the proposed ordinance. There was discussion regarding each section with examples for explanation purposes. "No Parking" signs were discussed as to where to place them, how many there should be per property, etc. without the need for extra permitting.

Ms. Shamp continued the discussion and pointed out areas she found problems with, including definitions and dimensions, as well as possible conflicts with other ordinances. Ms. Shamp stated that she does not favor a change in size regulations unless there is an issue with constitutionality. She also commented about the bench signs on the beach and the regulation of those since they are ugly and serve no purpose for the community. Ms. Shamp is opposed to changing the regulations regarding historical signage, unless there is a constitutional issue. She expressed her concern about the liability segment of the section regarding structure overhangs.

Ms. Kay agreed with Ms. Shamp in that there should be no changes unless they are needed to comply with the state statutes or the constitution. She also doesn't agree with changing the criteria for the HPB when dealing with historic designation signage.

Mr. Van Duzer expressed his displeasure in the historical designation criteria as it was applied to the Holiday Inn sign. He feels that there should be a special exception added to the ordinance for existing signs that do not meet the criteria, so the owners can maintain their signs (he gave an example of the Lighthouse Island Resort). He added that he believes the entire sign ordinance may need to be reviewed and rewritten.

Mr. Kakatsch agreed that the changes "should be kept to a minimum" and he is concerned about the cost of this project.

Mr. Kosinski referred to pg. 17, the section on sign permits and asked if there is a mistake wherein the language calls for approval by the Town manager. Ms. Miller agreed that this should be looked at as the old language says "Town manager." There was brief discussion about time limits for permits as well as regulation of non-conforming signs.

Mr. Zuba brought up "grandfathering" and is concerned that the Town has no real control over those older signs. He feels that all new signs be well regulated and that the LPA should have limited concern with the "grandfathered" signage.

Ms. Shamp asked for Public Comment. Mr. Melsick referred to Mr. Fluegal's comments on the "community standard" regarding this law. He said that the community had come together in the past to voice their opinions and create that standard for this law. He said that, when the law was passed, the community had eight years to come into compliance and they did it. He believes that "grandfathering" all of these people who had chosen to "thumb their noses at the community standard" and allowing them to keep their non-conforming signs is unfair. Mr. Melsick said that Mr. Stewart made a public statement, as did the town attorney, that the proposed changes would not change the size or dimensions but it was all being done to address changes in Supreme Court rulings. He cautioned that the LPA and other board members against being swayed in their decisions (regarding "grandfathering" signage) by friends or associates who have nonconforming signs and insinuated that some members are doing this. Mr. Melsick further insisted that the law must be enforced and that the Town has been hesitant to do so, adding that the original ordinance is a good law and its intent was a good one.

With no further public comment, Ms. Shamp stated that the LPA is not ready to go to hearing with this item until there is more review by all parties. Ms. Miller added that the LPA did bring up many areas where there are discrepancies in the language and in different sections and suggested returning next month with more revisions to clear up

inconsistencies for further discussion. Mr. Fleugal also agreed that they need more time to review and suggested returning in January to address two main areas, being the content addressing constitutionality and any inconsistencies from that new language, and any older already existing inconsistencies.

Ms. Shamp reminded that there will not be a December meeting and suggested that they schedule a January meeting and think about a workshop to get public opinion and input for the proposal. There was a consensus that this come back to the LPA in January and they will schedule and proceed from there.

Short recess at 11:15 AM-back at 11:20 AM.

Ms. Shamp requested that items of constitutionality be highlighted in a different manner when the draft returns to them so it will be easier to see what needs to be changed and what items may be revised.

Mr. Van Duzer addressed Mr. Melsick's comments regarding favoritism in the sign ordinance matters. He took exception to the insinuation that he is biased in his decisions. Ms. Kay defended and explained the decision regarding the Lighthouse sign.

B. 2011 LPA Meeting Agenda

August is not included for 2011 meetings and there is no December 2010 meeting, since the required meetings have been met. Mr. Zuba was again reminded to create an ornament for the Christmas tree.

Motion: Mr. Van Duzer moved to adopt the 2011 meeting schedule.

Seconded by Mr. Ryffel

Vote: Motion passed 7-0.

VI. ADJOURN AS LPA AND RECONVENE AS THE HPB

Motion: Ms. Kay moved to adjourn as LPA and Reconvene as HPB.

Seconded by Mr. Ryffel;

Vote: Motion passed 7-0.

Meeting commenced at 11:29 AM. Ms. Kay stated that she met with Mr. Fleugal to discuss the HPB and wants to start the HAC meetings again.

The HPB needs a new chair and vice chair.

Motion: Ms. Shamp moved to nominate Ms. Kay as Chair of the HPB.

Seconded by Mr. Kosinski;

Vote: Motion passed 7-0.

Motion: Ms. Shamp moved to nominate Mr. Zuba for Vice Chair.

Seconded by Ms. Kay;

Vote: Motion passed 7-0.

Ms. Kay said that “surette” means “little cart,” as explained by Mr. Fleugal, and the “sharing of design knowledge.” Theresa Schober will lead the “surette” in the future.

Motion: Mr. Van Duzer moved to adjourn as HPB and reconvene as the LPA.

Seconded by Mr. ???;

Vote: Motion passed 7-0.

VII. ADJOURN AS HPB AND RECONVENE AS THE LPA

Meeting was reconvened at 11:36 AM, with the same members still present.

VIII. LPA MEMBER ITEMS AND REPORTS

Mr. Zuba commented on the minutes from the meeting with Lee Tran, saying that there should be a direct connection from airport to the trolley. In addition, he questioned if the LPA looked carefully enough at the issue of the mobile toilets and suggests that it takes a closer look. Ms. Miller said this will be discussed at the Council meeting next week. Ms. Shamp stated that this can be brought before the board for discussion. Ms. Kay agreed it should come before the LPA for further discussion. Ms. Shamp asked for a show of hands of those interested in pursuing this. There is a consensus (5-2) that this be pursued and Mr. Zuba will lead the group interest in reviewing this and will represent the LPA. More discussion ensued about how to proceed with this and the LPA’s authority in bringing this forward. Mr. Kakatsch supports the installation of these units and feels that the public does too.

Ms. Kay asked about a “franchise fee” she read about on the utilities project and Ms. Miller expanded on that, adding that the Town go to a bond validation proceeding.

Ms. Shamp said that although she had been opposed to the large scale renourishment project and the federal involvement in it, she does support the navigation project and vegetation. She has learned that the easement agreements residents are signing with the government have a requirement for vegetation and asked Mr. Fleugal about it. He said there are some issues that are still being worked out with this project. Ms. Shamp pointed out the LDC section where this is addressed and made it clear that this is required and specifically stated. She is concerned that things are not being done properly in this regard. Ms. Miller added that it may be a condition of the permit issued by the DEP for beach renourishment to have some specific type of vegetation. Mr. Fleugal said the raking ordinance will be coming before the LPA next and after that, staff can do a presentation on the beach renourishment. Ms. Shamp reminded that this was written by MRTF and never came before the LPA for review. She added that the DEP hasn’t signed off on this yet and she’s concerned that the residents may not realize that this has not gone through the whole, proper process.

IX. LPA ATTORNEY ITEMS

Ms. Miller had nothing to report.

X. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Mr. Fleugal passed out a memo for a workshop on the on-premise consumption issue which was sent by Council to have LPA review. He came up with 3 options for Council's consideration: accept the LPA's interpretation that COP is not a permitted use; reject the LPA's interpretation; or determine that the LDC is the more appropriate place to identify these uses. The workshop is on Nov. 15 at 9:00 AM and Ms. Shamp requested that members attend; she and Ms. Kay will attend.

Ms. Kay said that Mr. Stewart had started preparing a list of items ongoing and wondered if this will be continued. She said it would be helpful to keep this going. Mr. Fleugal agreed that he will try to do this.

XI. LPA ACTION LIST REVIEW

- Resolution 2009-24 COP expansion on the beach; Mr. Fleugal

Future Work Activities

- Shipwreck-Continued at LPA request-May 10, 2011
- ROW Residential Connection; Van Duzer-TBD
- October 4th work session-LDC 613-14 10-25 Storm Water-TBD
- Sign ordinance-Ms. Miller; 2nd presentation Jan. meeting
- Post-disaster reconstruction/recovery-TBD; Ms. Miller

XII. PUBLIC COMMENT

No comment.

XIII. ADJOURNMENT

Motion: Mr. Van Duzer moved to adjourn.

Seconded by Mr. Kakatsch;

Vote: Motion passes 7-0.

Meeting adjourned at 12:17 PM. Next meeting January 11, 2011.

Adopted _____ with/without changes. Motion by _____
(DATE)

Vote: _____ Signature: _____

- End of document

MINUTES
FORT MYERS BEACH
Local Planning Agency

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

Tuesday, January 11, 2011

I. CALL TO ORDER

Meeting was called to order at 9:13 AM by Chairperson Joanne Shamp. Other members present:

Bill Van Duzer
Joe Kosinski-emergency excuse
John Kakatsch-late
Carleton Ryffel
Hank Zuba
Rochelle Kay

LPA Attorney Marilyn Miller

Staff present: Community Development Director Walter Fluegal, Tina Ekblad, Planning Coordinator, Leslie Chapman, Zoning Coordinator, and Keith Laakkonen, Environmental Sciences Coordinator

II. PLEDGE OF ALLEGIANCE and INVOCATION
Ms. Kay

III. MINUTES
A. Minutes of November 12, 2010

Motion: Mr. Van Duzer moved to accept the minutes, as recorded.
Seconded by Mr. Zuba;

A few name spelling corrections were noted and corrected.

Vote: Motion passed 5-0.

IV. PUBLIC HEARINGS

A. Special Exception-Surf Club FMB SEZ2010-0005

The attorney swore witnesses and Affidavit of Publication of Public Hearing was noted. The chair polled the members for any ex-parte communications. Mr. Van Duzer stated that he knows both of the property owners but has had no communications regarding this item. Ms. Shamp had a site visit only and all other members had no communications.

Presentation by applicant:

Mr. Gene Whitley addressed the LPA on behalf of the applicant. He referred to the staff report, agreeing with the bulk of it and pointing out to the members that staff has recommended approval. He explained that the applicant is asking for permission to install a deck where the retention area is located now so that patrons can enjoy food and drink outside, as well as smoking.

Mr. Van Duzer asked what the operating hours would be for the proposed deck and applicant said that although they would keep the same hours, there are no plans for music or entertainment outside.

Ms. Kay asked for clarification as to the exact location of the deck and pointed out that there was mention of "there could be music until about 9:00 PM" but applicant reiterated that there are no plans for that now.

Mr. Ryffel pointed out that the staff is recommending the consumption on premises until 10:00 PM and asked if the applicant understands that; applicant acknowledged that he does.

Mr. Zuba asked if the handicapped access points are controlled and how. Mr. Whitley said there is a 10 ft. opening in the deck, which is adjacent to the sidewalk used to enter the front door.

Ms. Shamp pointed out the staff recommendation on pg. 6 regarding music "from 11:00 AM to 9:00 PM of each day." She also asked a question about the exact location of the deck and applicant gave more specific details and said that the deck is meant to be pervious and will not hinder drainage.

Presentation by staff:

Tina Ekblad, Planning Coordinator, addressed the meeting on behalf of staff and gave a brief history of the property, which was the Waffle House site and had been approved by the county in 1998. The applicant purchased this property in April of 2009 and is asking for a special exception for consumption on premises outdoors, which is required due to the fact that the property is within 500 ft. of a dwelling under separate ownership. Ms. Ekblad confirmed that the staff recommended approval with certain conditions regarding timing and any music/entertainment. For the record, she read a letter addressed to Mr. Fluegal from George Gannon, owner of the Beacon Motel, dated January 10, 2011 (attached):

"...the above special exception request for outdoor service of alcohol...presents a serious issue of late night alcohol service, music and loud noise to the overnight guests of the motel. Presently there is loud music coming from the Lani Kai, which interferes with our guest's ability to sleep at night." The letter goes on to explain that the writer could not be at the hearing but wants his "serious concerns known (to the

Town)...and request that should the Agency consider any approval, that conditions be imposed controlling loud music, noise and time curfews."

Mr. Zuba asked why the application process takes so long. Mr. Fluegal responded that the process is getting better but has basically taken such time due to many changes in personnel and staff assignments. He also asked if there was a landscape plan for the property and suggested that, in the future, all applications of this nature include one due to the obvious impact on the area. Mr. Fluegal agreed.

Mr. Ryffel asked if any type of state permits were required and it was agreed that there were no requirements for any. He also questioned the 10:00 PM time limit, wondering how that time was picked. Ms. Ekblad answered and said it is only a starting point for discussion. Mr. Ryffel asked if there was a difference between being on that side of Estero Blvd. and being on the beach side. Ms. Ekblad said she thinks there is, at least in this situation since there is a residential community close by and it is on a canal.

Ms. Shamp asked if staff looked at the retention concerns there. Mr. Fluegal said he did have staff look at it immediately and all agreed that there were no problems. Ms. Shamp noted that there could be some buffering options in the landscape plan as part of the conditions to help in modifying the noise.

Ms. Kay reminded that the LPA had been trying to do away with specific hours for specific businesses to the point where there would be a unified code of opening and closing. She pointed out that, legally the applicant can be open until 2:00 AM and wondered if their focus is now going back to restricting these things. Mr. Fluegal commented that he is not aware of any uniform conditions in the Code, other than the absolutes of 2:00 AM to 7:00 AM rules, and said that while reviewing this particular application, it became obvious that more sensitivity was in order because of the location being at the end of a residential canal in a residential area. He added that this is exactly the purpose of the process, to be aware of certain special exception needs. Ms. Kay is still concerned about consistency in the future and Mr. Fluegal agreed, adding that there still needs to be a case-by-case review for fairness.

Mr. Kakatsch asked how is the deck accessed and how does the applicant control who goes in and out. Mr. Fluegal answered and said he understood there was an opening near the front door, and that is the staff recommendation (see diagram being referred to).

Mr. Van Duzer agreed with the staff report and is satisfied. Ms. Shamp asked for the percentage of food to alcohol served, which is 49% alcohol and 51% food.

Motion: Mr. Van Duzer moved to approve the special exception, with stipulated conditions #2 (sales service and consumption of alcoholic beverages) and #4 (music and Entertainment), as recommended by staff.

Seconded by Mr. Ryffel;

Ms. Kay added that speakers be directed towards Estero Blvd., if used, and a landscaping plan includes buffering and Mr. Van Duzer amended his motion to include these.

Vote: Motion passed 6-0.

Ms. Shamp realized that she neglected to ask for public comment and, before closing, did so. Mr. David Easterbrook did the drawings for the deck and addressed the meeting. He said that he designed the deck specifically with the view and location in mind. He said that a buffering landscape plan would block the view and that the proposed handrail would also not be attractive; he doesn't see the need for these things. Ms. Shamp said that this will come up in the permitting process and that would be when to bring it up. Mr. Zuba suggested a "living fence" of sorts.

Mr. James Bailey addressed the meeting as said he resides within 500 ft. of the subject. He fully supported the LPA's decision.
Hearing closed at 9:58 AM.

B. Raking Ordinance-Chapter 14 LDC

Staff presented Affidavit of Publication of Public Hearing and the attorney read the caption for the record, Section 14-1 through 6. Mr. Keith Laakkonen presented the draft information on behalf of the staff and gave a brief history of the origin. He said that as it exists now, the LDC requires mechanical beach rakers to get a permit from the Town of FMB; however, due to vagueness in the code no such permits have actually been issued by the Town. The issues at hand include defining the wrack line and regulations regarding proximity of raking, etc. to that line, allowing for 1 raker to rake several properties without needing additional permits, setting specific time frames, etc. MRTF had been tasked with looking into this more than a year ago and has held several workshops and public meetings to clarify terms.

The board decided to open the floor to comment before their discussion.

Public comment:

Bill Perry addressed the meeting as the main beach raker and gave a history of how the raking regulations came to be. He said that the LDC regulations were basically taken from the DEP's regulations when it was decided that the DEP would no longer be involved locally. Later, that changed and the DEP did regulate, requiring permits for beach raking. Dr. Shockey had decided the Town should again regulate the raking but Mr. Perry opined that this is not necessary when the DEP already regulates raking. He said it is excess paperwork and an unfair tax on the waterfront property owners being charged for a permit that they get from the state for free. He said that every year he rakes each property on the entire beach, taking a staff member with him and photographing his work; this, he says is enough for the DEP. He explained that the process he has been using for the past few years has satisfied the DEP and is well documented. Mr. Perry does not understand why the Town needs to charge the property owners for a permit when they pay him to rake the beach; he believes they feel that they are providing a service to the community, especially when the public

uses the beach. Mr. Perry said that he objects to a decision by MRTF at the most recent of several meetings he attended, to restrict his hours of raking and not allow it after sunset or before sunrise. He said this restricts his access to bare beach before people and children arrive. He added that he constantly polls the property owners and has never had a complaint about raking in the evenings. He added that he would certainly not object to the Town requiring him to have lighting and insurance after dusk but cannot go along with not being allowed to do this at night at all. He is against the issuing of permits for raking by the Town but agrees with the regulation of the actual tractor and requiring a license or permit to engage in that business in the beach.

Larry Crossman, owner Estero Island Beach Villas, said that he does not agree with restricting raking to daytime only and sees no problem with Mr. Perry's raking at night. He is pleased with Perry's services and his conscientious work.

Kenneth Edge from the Dolphin Watch Condo Assn. spoke on behalf of himself and a few other residents in the audience from the same association. He added that he was also representing a few in the room from Island Shores. He said the county sent them a letter back in October which asked them to sign a temporary construction permit for the beach renourishment project. As an incentive for doing so, those signing would receive benefits of the vegetation plan of FMB. He said that this meant the signers would maintain existing raking abilities and could continue to rake as they did in the past, with no additional cost. Mr. Edge said he had conversations with a few people at the county level who assured him that this would be the case and under the 15 pg. Beach Management Plan, it states the same thing. He feels that they were "duped" since now the Town wants to charge these residents for raking and said he and the others are very upset and concerned about this.

Jeff Werner, Chairman of MRTF, addressed the meeting and referred to Section 14-1c of the LDC, which he read part of, "*any mechanical beach raking requires a permit from the Town.*" He added that there was no actual system in place for this so staff asked MRTF to develop a permit and process for this purpose to be added to the LDC. He said that after public meetings MRTF found that it is dangerous to rake after dark. Moreover, there is illegal raking taking place in the area of Leonardo Arms and MRTF feels that this permitting process will allow the Town to enforce illegal beach raking.

Toby ??? , ??? Park Beach Club, said that he believes that the beach has been raked in the dark and the light for at least 25 years and nothing bad has happened. He said that the attractiveness of the beach depends on raking, especially for tourists, and he believes that birds will nest when the beach is clear and clean. He feels that just considering the amount of beach that needs to be raked, there needs to be raking at different times. He sees no sense in predicting the future and guessing that there *may* be a problem when for 25 years there has been no problem.

Dan Hughes, President of Smuggler's Cove Condo Assn., said that he feels that the

permitting issue would not be an issue if the state was enforcing their permit requirements. He said that the state overrides the local, of course and feels that a permit is not a prerequisite to enforcing the other provisions of the code. He added that it is not a good time to impose additional fees on the residents in this economy.

George Reppetti, President of Island's End Condo Assn., said that there is no need for more government intrusion into the rights of property owners on the island. He said that he is worried that if the Town has the authority to deny Mr. Perry from cleaning his beach that he might have a problem due to his opposition to the bird sanctuary. He said that when he rakes his beach, he gets more business and all of the money comes back to the community. He said there were visitors to his beach last year who complained about not being able to walk in the grassy mess that is Castle Beach and Carlos Point. He said that those people said that the birds (terns) were coming down and attacking people on the beach.

Artis Chester stated that she is a "private property owner" and does not need a permit to take care of her own property and doesn't want the Town to step in and tell her how to do it. She said Mr. Perry maintains her property and has increased its worth with his services. She wants no part of the extra taxes.

Lauralee Saderfield, Pres. of Castle Beach Condo Assn., stated that she is next to Carlos Point and very much involved in the bird issue. She said she has "an issue" with the Town wanting to step in and charge residents who have been working with the Town to maintain the beach is not proper. She said she is in favor of allowing the raking to continue as it is going now, praising Perry's services. She believes the Town will ruin the cooperation that they have now between the Town and the beach residents who are trying to accommodate the birds and the other issues.

Ray Murphy said that he only wants to address the night time raking and said it is a great service, out of turtle season. He also praised Mr. Perry's reputation and his services and supports Perry's need to tend to the beach at all hours when people are not around.

Sherrie Addias wished to address private property rights. She said that although she applauds the Town's efforts to generate revenue, she doesn't agree with doing that by taxing the "already strapped" property owners. She alluded to other possible extra taxes/charges that may come about if the Town is allowed to institute this process and finds it unfair to charge residents for things that they already do to keep the property in good condition.

Public comment closed. Ms. Shamp asked for staff comments.

Mr. Laakkonen clarified that the DEP regulations only cover turtle season and not the rest of the year. He referred to earlier comments dealing with comments by DEP that they would not regulate raking and said that if that does happen in the future, this would give them a set of rules to protect the beach. He said this is not a new

regulation and is has been on the books for some time. He said that this set of rules will have no affect on the north end for those who signed the easement agreements. Mr. Laakkonen agreed that the comments regarding the birds are correct and a very unique situation exists on the south end. The nighttime raking came up as a safety issue and liability was considered. He pointed out that he gives an option for night raking in the recommendations allowing for inspections of the lighting, etc. on the tractors to be sure they are safe.

LPA discussion:

Ms. Shamp thanked the public for their involvement and concern. She referred to LDC Sec. 34-12, the objectives of Town Planning and the creation of the LPA were to further the welfare of the citizens of the Town and to "promote a better, more helpful, convenient and efficient environment..." She said that this does create an additional layer of government, however, protection of the environment is valuable and they need to find a balance. On the other hand, she said, the island has been gaining more and more beachfront since Hurricane Charlie alone. She said that Lee County actually expects that the property owners maintain their beaches and read a quote from Lee Co. Parks and Rec: *"the county considers that owners of private beachfront property be responsible for raking the beach behind their homes. They are responsible for gathering up all raked beach debris and hauling it off the beach. If the debris is algae or other vegetation, that debris can be set out for horticultural or curbside pickup."* She gave more examples of this expectation throughout the state for coastal communities and said that there is no doubt that raking should be controlled by the Town during turtle season but that the DEP also regulates raking outside of the season. Marco Island staff rakes the beaches, Long Boat Key rakes as needed, and there were more examples but she said that "we are the economic engine for Lee County and for SWFL" and there needs to be a balance between environmental interests and commercial interests. Ms. Shamp said there is no doubt that raking must be controlled during raking season but the DEP also controls it after turtle season and they allow hand-raking by property owners. She read a note from the previous Environmental Services Director, from August 2007, which specifically stated that FDEP mandates that *"maintenance done by hand outside of nesting season is exempt."* FL Statute 161.241 says that *"possession of sea oats is illegal unless it is by the property owner, or permission of the owner."*

Ms. Shamp showed photos of properties of her property and the surrounding lots, showing the different results of raking an un-raked beach area. She continued to be adamant that raking is a maintenance right as well as a service that she provides to the Town and all beach visitors. She referred to the LDC wherein it regulates what trees you can have on your own private property and wondered if permits would also be needed for tree cutters every time they cut trees. In addition, she pointed out the same concern with regard to the fertilizer ordinance and said that she feels very strongly about private property rights. Ms. Shamp also agrees that the only reason the Town was brought into this was "because the FDEP stopped doing its job" but it has since started doing its job again and has regulations for raking. She suggested revised

wording of the ordinance to be “any mechanical beach raking requires a permit from the FDEP,” and not from the Town. She also expressed concern with Section 14-6 Ab “under normal circumstances, the raking of the wrack line is prohibited; no mechanical or hand raking may take place seaward of the wrack line or within 10 ft. landward.” She said that as a property owner, she is allowed to hand rake and that term should not be in that section. Ms. Shamp was emotional in expressing her concern for the safety of children who may be hurt by a raking machine or other equipment because the workers are restricted to daytime hours when the beaches are full. She pressed on that FMB is not only a family and tourist beach but an environmental sanctuary, needing to protect nature as well as generate economic/revenue streams, while still protecting property rights of its residents. Her comments drew applause from the room.

Mr. Ryffel handed out some photos as he said this ordinance is a “duplication of effort” and he would not vote for it. He also agreed that restricting raking after dark is ridiculous, pointing out that holes in the sand dug by beachgoers are a much more serious problem. Mr. Ryffel went on to agree with many of Ms. Shamp’s comments and added that the ordinance should be reworded at some point.

Mr. Zuba expressed a desire to learn more about precedence as far as other towns and what they experience with these policies before he would decide on this ordinance.

Mr. Van Duzer wondered why this is actually before the LPA since the state had decided to oversee this and agrees with Mr. Ryffel that this is a duplication of efforts. He believes that the raker (business owner) should be responsible for the licensing, liability insurance and other permitting needed, not the Town.

Mr. Kakatsch agreed with all of the comments in that there is no need for more regulation. He asked about the Town liability in the case of the holes dug in the sand. Ms. Miller gave general explanation of the limited liability for this.

Ms. Kay was not aware that the state had issued permits and asked if it is a year-round permit. Mr. Laakkonen said it is year round but the conditions that apply to it are only during turtle season and the rest of the year is not regulated. Raking by hand is regulated but mechanical is not regulated by the state. There was discussion about the raking and how it affects the wrack line. Mr. Laakkonen gave some details about the wrack line and how it is vital to the health of the beach and life of the wildlife. Ms. Kay would like to see this not changed in the LDC and wondered why there couldn’t be regulation without permitting. Ms. Miller answered that this would require the property owner to be liability then instead of the raker.

Ms. Shamp again said that beach raking is an important issue and should be part of the LDC, although she personally does not support the present ordinance. She approves of the proposed definition of “wrack” but feels that there is still conflicting opinion of it and a great deal of confusion.

Mr. Fluegal commented that hearing all of the input today helped him realize what concerns are more important than others to property owners and where the priorities lie. Basically, this section of the code either needs to be fixed or eliminated and he wants to fix it. Ms. Miller pointed out that the document is marked "draft" and it had been advertised as a public hearing, which is the only way to get public input. She asked for LPA opinion as which way to proceed.

Mr. Zuba asked if a motion to table this would be appropriate at this point, with direction to staff to clarify some issues before any action. Mr. Kakatsch asked why the Town is not providing the raking service in an organized regulation if it is such an important need. There was discussion about the option of the Town taking over the raking, using a contractor. Mr. Laakkonen said that cities of Naples and Marco do rake their own beaches and places like Sanibel and Captiva do not allow raking at all.

Mr. Ryffel opined that this is a "hot button" to push and said that "people have property rights and why do they have to allow a Town tractor to ride on their property," adding that "that's just as bad as getting these easements..." (inaudible due to applause). He feels it should be left to private business.

Ms. Shamp asked for a consensus as to the action to be taken in this matter. No members were ready to vote for the present option to be passed. Mr. Zuba wanted more information and recommended that, in its present form, the LPA not pass it. Mr. Ryffel agreed and said they need to recommend to Council that it needs to be redrafted and again taken to MRTF.

Motion: Mr. Zuba moved that the LPA reject the draft amendment to the LDC Section 14-1 through 14-6, as it is currently written.

Seconded by Mr. Van Duzer;

Mr. Zuba revised his motion to reject the ordinance as currently written and advise staff to include the following elements in any proposal in the future: insurance regarding any beach raking by machine; some description of various option precedence that exist in area communities that have addressed this issue; the hours of operation. Ms. Shamp added removal of the term "or hand-raking in Sec. 14-6a (b) ;" and in Sec. 14-6c change to read "any beach mechanical raking requires a permit from the FDEP" and not the Town; consideration that no Town permit be required; Sec. 14-6e needs clarification, regarding fines. Mr. Ryffel suggested striking the time restrictions after dark, outside turtle season. All agreed that it then return to the LPA for review/approval.

Motion maker and seconder agree to revisions;

Vote: Motion passed 6-0.

Hearing closed at 11:35 AM.

Short recess until 11:47 AM.

C. Hearing FMB SEZ2010-0003 Mermaid Lounge and Liquors

The attorney swore in witnesses and noted existence of the Affidavit of Publication of

Public Hearing. Members were polled for any ex-parte communications with Ms. Shamp only having a site visit.

Applicant Scott Van Sella addressed the members and referred to paperwork sent to staff prior to the meeting, which shows the proposed addition to the rear of the property, including a handicapped access ramp, restrooms, a tiki hut and a small kitchen.

Mr. Ryffel asked if the deck is level or elevated and was told it is off the ground. Ms. Shamp asked if there was currently music outside, other than special events. Applicant replied that special events are the only time when there is music, so far.

Mr. Fluegal spoke for the staff and commented for the record that his wife is the insurance agent for the applicant's homeowner's policy but that it has no bearing on the issue. He turned the floor over to Ms. Leslie Chapman, new Zoning Coordinator, who began by making a correction in the staff report on pg. 3, last paragraph; the use should be bar/cocktail lounge use. She stated that the property is within 500 ft. of an adjoining property under separate ownership and the request is for outdoor consumption on premises in the downtown district. She showed photos and gave details of the request as it refers to the regulations.

Mr. Van Duzer noted that time references for music or outdoor entertainment in the recommendation be changed from 11:00 AM to 9:00 PM instead of 10:00 PM. The applicant said he's like it to remain at 10:00 PM but the staff recommends the earlier time due to the business location.

Mr. Kakatsch asked about a beach house in front of the building and was told it is a rental, which the applicant owns. He suggested that the speakers be turned away from properties.

Ms. Kay noted that this is further expansion of consumption on the beach and asked if the deck is surrounded by wall on 3 sides. The applicant said that is correct and only the beach side is open.

Mr. Ryffel asked why these time restrictions are can't just be the same as all the other businesses there. He said this is an "intensive area" and that's where the music should be.

Mr. Zuba asked for clarification as to the location of the fencing. Mr. Fluegal answered that it is just for the deck area and Mr. Zuba asked for more details regarding lighting, landscaping, etc. The applicant explained using his visual display and there was discussion about the parking area landscaping.

Ms. Shamp commented that the plan looks nice and will improve the property. She reminded that the letter previously read into the record (see pg. 2) from Mr. Gannon, is also noted for this case too.

Mr. Kakatsch asked if the beach house was part of the commercial area. The applicant said that it is but that they obtain proper permitting for special occasions.

Public comment was opened; same was closed with no comments.
LPA discussion:

Approval as it is conditioned would allow outdoor entertainment until 10:00 PM and the applicant asked if it could be 11:00 PM on Friday and Saturday nights only. Discussion ensued about the time restrictions.

Motion: Mr. Van Duzer moved to approve the staff recommendation, specifically, #1-the area of the subject property used for outdoor consumption must be confined entirely to proposed deck and tiki hut shown on survey and referenced as Exhibit A; the area will be enclosed with a 42" railing across the beach side only, except for access points further delineating the outdoor consumption area from other outdoor areas; #2-sales, service and consumption of alcoholic beverages must not begin earlier than 9:00 AM and must end no later than 2:00AM each day; #3-music or other audible entertainment prohibited before 10:00AM and after 10:00PM on Sunday through Thursday nights and 11:00AM to 11:00PM on Friday and Saturday nights, and all outdoor seating areas must comply with all Town noise Ordinances; #4-provide the Town with a copy of the state permit for construction within the CCI.

Seconded by Mr. Kakatsch;

Ms. Kay again stated that she is not happy with further expansion of alcohol on the beach.

Vote: Motion passed 6-0.

Motion: Mr. Zuba moved to request that the applicant provide the Town with a landscape plan with emphasis on addressing Estero Blvd. frontage.

Seconded by Ms. Kay;

Mr. Fluegal commented that this is a mitigation measure for the granting of the exception for the DL plan.

Vote: Motion passed 6-0.

Hearing closed at 12:21PM.

Motion: Mr. Ryffel moved to break for lunch.

Seconded by Mr. Zuba;

Vote: Motion passed 6-0

Lunch recess 12:22 PM.
Reconvene at 12:50 PM.

D. Sign Ordinance

Staff provided a copy of the Affidavit of Publication of Public Hearing. Mr. Van Duzer commented that this should not be at the public hearing level for today, as indicated in the minutes. Ms. Shamp agreed and referred to Mr. Fluegal who explained that Town Council directed the sign ordinance focus on only constitutional issues at this point. Council wanted this done immediately so that enforcement can commence now. Ms. Shamp said that the LPA appreciates Council's input and direction but that they are not pleased with their insistence on holding a public hearing on this one meeting sooner than they had planned. She added that she is very pleased with the format used by Ms. Miller in presenting this ordinance.

Ms. Miller gave a brief overview of the document where there were strike outs, etc. Again, members were reminded that they were dealing today only with issues of constitutionality. Mr. Fluegal gave options for moving forward and making the ordinance enforceable.

Ms. Shamp suggested going over the document page by page and asking for comments; Mr. Ryffel and the other members agreed (refer to the draft). Mr. Zuba asked what the budget is for enforcement and what has been the experience in terms of costs. Mr. Fluegal replied that Council directed him to "do this and enforce it," which he said the Town will do within current budgetary restraints, adding that there will be no proposal asking for more code enforcement officers, although he is still working on how to do all of this. He said that one area they are working on is more cooperation and working with property owners to help them comply rather than just imposing fines. More discussion ensued regarding code compliance with signs.

Ms. Kay asked how this code can be enforced if there are not to be fines. Ms. Miller added that there is a process that there are notices and other actions before the fines are actually imposed.

The group began the review and nothing was noted until page 4 where a question was raised about the identification sign and there was discussion about the use of terms for this type of sign.

Page 5: parasite sign; there was a question as to the definition; it is prohibited.

Page 7 there was an elimination of a paragraph and Ms. Miller explained why this was taken out. There was discussion about "sandwich board signs" and how this should be handled.

Page 12-"posted property" signs were discussed and compared to "incidental" signs.

Page 13-Ms. Kay questioned the size restrictions here and Ms. Miller explained that this regards "free speech" signs and where they are allowed. Mr. Ryffel disagreed with some of these sizes and Ms. Miller agreed that this needs to be revised, defining it as a "No Parking" sign. More discussion took place here.

Page 17-ID sign needs to have a permit attached on the upper right corner.

Pgs. 18-20-scratched out.

Page 21-Ms. Shamp was not happy with the proposed change in the description of the role of the LPA as pertains to the HPB and signs here. More discussion took place

about historically significant signs and the involvement of the LPA/HPB in this process. All agreed that the role of the Council should only be hearing appeals after the decision of the LPA/HPB, and that Council not have the final say. There was a unanimous consensus that the process should remain the same as it was, with no change.

Page 23-Mr. Van Duzer questioned the measurement of sign heights and feels there needs to be an area for special exemption status. All other pages were reviewed and there were a few other comments to be considered in the recommendations to Council, including addressing the bench signs.

Motion: Mr. Ryffel moved to approval of Sec. 30-1 Sign Ordinance, as amended by the LPA attorney with changes noted from LPA discussion.

Seconded by Mr. Kakatsch;

Vote: Motion passed 6-0.

Hearing closed at 2:12 PM.

V. ADJOURN AS LPA AND RECONVENE AS THE HPB

Motion: Mr. Van moved to adjourn as LPA and Reconvene as HPB.

Seconded by Mr. Zuba;

Vote: Motion passed 6-0.

Meeting commenced at 2:13 PM. Ms. Kay stated that she and Mr. Fleugal met with HAC and discussed parking and the signs. Mr. Fluegal suggested February for the next designation it would be Carter Cottage; if so, staff would work on the list of invitees.

Mr. Fluegal discussed more permanent types of monument plaques and there was discussion about researching grants for this purpose as well as vista signs.

Ms. Kay polled the members for opinions as to scheduling the charettes. She said they have use of the Newton House for this purpose. The consensus was they be held after tourist season, perhaps planning during the off-season.

Motion: Ms. Kay moved to adjourn as HPB and reconvene as the LPA.

Seconded by Mr. Van Duzer;

Vote: Motion passed 6-0.

VI. ADJOURN AS HPB AND RECONVENE AS THE LPA

Meeting was reconvened at 2:25 PM, with the same members still present.

VII. LPA MEMBER ITEMS AND REPORTS

Mr. Kakatsch said he read the Sandpaper and wants the LPA to make a recommendation to the mayor regarding the library. Ms. Kay reminded that the library is a separate tax area and she feels it is not within their scope of responsibility to do so. Mr. Kakatsch read an excerpt from the paper which indicates that the Town attorney recommended discussions between the Town and the library. Ms. Miller said there is an item on the

upcoming work session regarding this; Jim Humphrey has done a memo about certain requirements that apply to different tax districts, according to the FL Statutes and this applies to any cooperation between libraries and their districts, etc. She added that although the library is technically in a separate district, there is some responsibility to local agencies and this will be discussed at the Council meeting. Ms. Shamp said that this is really out of the boundaries of the LPA.

Ms. Kay asked if there is a rental fee for outsiders to use the pool, etc. and there was brief discussion about that.

Mr. Ryffel asked for excused absence for the next meeting as he will be out of town.

VIII. LPA ATTORNEY ITEMS

Ms. Miller had nothing to report.

IX. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Mr. Fluegal gave had a few items to add to the LPA Action list. The Council rejected the LPA's recommendation that COP's on the beach should be further restricted as directed staff to create an ordinance to address this but he wasn't sure when this will be done. Ms. Shamp advised that when it does come before the LPA, they will need a very thorough presentation with all needed information. Brief discussion ensued about the process.

There is some work being done on the various beach ordinances like Jet Ski and other rental businesses there and parasailing is at the top. Mr. Fluegal said that the Code Enforcement ordinance also needs strengthening. Ms. Shamp noted that many of the topics are controversial and asked if they will have some preparation in the form of workshops, hearings, etc. Mr. Fluegal agreed and said that most will have workshops but that some of the non-controversial ones may just come to the LPA with a Public Hearing.

X. LPA ACTION LIST REVIEW

- Special exceptions-Surf Club and Mermaid Lounge-Van Duzer/Kay
- Beach raking TBD

Future Work Activities

- Shipwreck-Continued at LPA request-May 10, 2011
- ROW Residential Connection; Van Duzer-TBD
- LDC 613-14 10-25 Storm Water-TBD
- Parasail, jet ski ordinances-TBD; Fluegal
- Sign ordinance-Ms. Miller; TBD
- Post-disaster reconstruction/recovery-TBD; Ms. Miller

XI. PUBLIC COMMENT

No comment.

XII. ADJOURNMENT

Motion: Mr. Kakatsch moved to adjourn.

Seconded by Mr. Ryffel;

Vote: Motion passes 6-0.

Meeting adjourned at 2:53 PM. Next meeting February 8, 2011.

Adopted _____ with/without changes. Motion by _____
(DATE)

Vote: _____ Signature: _____

- End of document

MINUTES
FORT MYERS BEACH
Local Planning Agency

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

Tuesday, February 8, 2011

I. CALL TO ORDER

Meeting was called to order at 9:03 AM by Chairperson Joanne Shamp. Other members present:

Bill Van Duzer
Joe Kosinski
John Kakatsch
Hank Zuba
Rochelle Kay
Carleton Ryffel-excused

LPA Attorney Marilyn Miller

Staff present: Community Development Director Walter Fluegel, Tina Ekblad,
Planning Coordinator, Leslee Chapman, Zoning Coordinator

II. PLEDGE OF ALLEGIANCE and INVOCATION

Ms. Kay

III. MINUTES

A. Minutes of January 11, 2011

Motion: Ms. Kay moved to accept the minutes, as recorded.

Seconded by Mr. Kakatsch;

A few name spelling corrections were noted and corrected.

Vote: Motion passed 6-0.

IV. ADMINISTRATIVE AGENDA

A. Rezoning 216 Connecticut St.-DCI2011-0001

Staff confirmed the Affidavit of Advertising publication and Ms. Shamp polled members for ex-parte communications, adding that she had a site visit only. There were no other declarations.

Applicant testimony:

Ms. Ekblad represented the Town for this rezoning for parking at the Mound House.

She testified that this was approved by Council at the December work session and she gave a brief history of the property, including current zoning and future land uses. Ms. Ekblad said the request is to rezone .42 acres from residential conservation to commercial planned development to allow a 27 space parking lot with an information kiosk and storage, which the current zoning does not allow for. Parking lots can only be permitted by special exception or planned development rezoning. Ms. Ekblad referred to a document showing the proposed rezoning area and said that staff has added a condition to limit the sizes and location of the storage areas. Staff is recommending the rezoning with the following condition: a gate is to be included to secure the property at the front entrance.

Ms. Kay asked how they will keep beach goers from parking there and Ekblad said that staff has suggested that the lot be monitored by staff whenever possible.

Mr. Kakatsch suggested there be a charge for parking along with some type of validation program so that beach goers may not use the lot for free beach parking. Mr. Fluegel suggested that Ms. Schober answer any operational questions and issues since she knows those procedures the best. Ms. Shamp asked Ms. Miller for authorization to change the hearing procedures slightly to allow Ms. Schober to give her presentation at this time and then return to the discussion.

Mr. Zuba asked for clarification from Mr. Fluegel regarding the waiving of the traffic impact study. Mr. Fluegel said he waived this one because all of the parking generation for this lot is generated by the Mound House and controlled by the Mound House CPD. He said that these are 2 separate CPDs and wants to keep it clear that the Mound House is the trip generator and they are not contemplating any principal uses on this property. He said the uses are all ancillary and relate back to the Mound House, and staff will control that and not allow any other principal use. Mr. Zuba said that the parking is directly related to the host business and he wanted to know how much parking is currently available under the Mound House CPD, how is it used and what will this add. He said the proposed 27 spaces do not currently exist. Mr. Fluegel said that the entire reason for the parking lot is due to the added underground exhibit and existing displays inside the house.

Ms. Shamp reminded that the LPA is mandated to monitor sufficient safeguards to public interest and she is concerned that they remain aware of their responsibility to the neighborhood and what the traffic and parking may do to the community. She said that the location of the lot creates an impact of its own in that it is beside the Mound House and this puts any pedestrians walking from the lot to the house in possible jeopardy. She asked how they intend to address this safety issue. Mr. Fluegel said that one of the reasons for the kiosk is to have a kind of gathering station where visitors can wait for staff to assist them, perhaps with a golf cart. Ms. Schober added that this is one of the uses intended for having a kiosk and staff will be able to guide patrons to the attractions safely. In addition, she explained that they intentionally placed the lot at the existing 3-way stop to make it less of a hazard. She said that from the public input sessions during the plan development, there was resistance to a

sidewalk being installed so they needed an alternative. Ms. Shamp said that she is also concerned about the need for extra signage for parking in the area and Ms. Schober agreed that this has been a problem since they acquired the property, but there remains a need for some signs. Existing signs in the area are not all from or for the Mound House and some are outside the gates. Ms. Schober said that the property is posted to be open from sunrise to sunset, as a park, and therefore some parking is still open to the public. Ms. Shamp asked Ms. Schober to discuss the storage shed and give details about why it is located in this area, what it will be used for, etc. Schober said it's a small (75 sf) shed and will hold lawn maintenance equipment for the property.

Mr. Kakatsch asked for the proposed hours and Ms. Schober said there aren't specific ones set yet but they are now open from 8:30 AM-4:30 PM M-Sat. and there is limited evening programming anticipated. She said that night lighting is required by code and will be done by special permit for those events, being sure that they follow restrictions like sea turtle season.

Mr. Zuba asked about "Note 3" in the Master Concept Plan which states that "detailed alternative landscape plan will be submitted at the time of the development order." He said that this has happened in the past and not been acceptable so he would like to see what is being proposed as well as the Mound House proposed budget. Mr. Fluegel replied and referred to the statement of "alternative betterment plan" which means the requirement for what will go in there is greater than a normal buffer. Ms. Ekblad expanded that the design of the lot was chosen through the public process and it doesn't technically meet the guidelines of a traditional buffer, so they tried to incorporate any area not being used otherwise, into the buffer. The plan exceeds normal requirements in order to accommodate the interested public and comply with resident's concerns. Ms. Schober said that the landscape architect's preferred plan was estimated at \$188,649.00-\$211,000.00 and about 36,000.00 is for plantings alone. There was more discussion about the proposed plan and what will be installed.

Mr. Kosinski disclosed that he had no involvement in the lot but he is directly involved in the restoration of the Mound House and feels he can be objective on this issue. He said that their function is to recommend approval of the entire plan to Council but he feels they cannot do that without all of the information before them; he opined that this should come back before them at a time when the whole package is available. However, Mr. Fluegel reminded that the "missing parts," the landscape and lighting plan are not required as part of the CPD process. Mr. Kosinski stated that he is aware that these aren't required but insists that they should be part of the proposal so that they know the totality of what they have passed along for approval. Mr. Fluegel said that it is not part of the package at this point and would hold up the entire project to wait for that. As an alternative, he offered the possibility of other restrictions to be put in place by the board, referring to the back of the report where there is a cost estimate. Mr. Kosinski asked about consideration of area home values being impacted and Mr. Fluegel again repeated that these things are not within the scope of what staff can consider and it is not part of the criteria. There was brief

discussion about the bus parking and handicapped parking spaces and Ms. Schober gave a history of the development of parking areas at the property.

Ms. Shamp asked what material the lot would be constructed with and Ms.. Ekblad replied that they need to comply with the code, which may include “stabilized surfaces of grass or clean-washed angular gravel or other similar porous materials.” Ekblad went on to cite the code and said that the lot would need to be impervious, by code standards.

Ms. Kay pointed out that there are 2 letters in their packets from neighbors who oppose the lot and asked if there were any comments supporting the lot. Ms. Schober said that there were 3 meeting held by CELCAB which brought much support for the project from some residents. Mr. Fluegel also referred to the comments from some residents in the report.

Public comment:

Ms. Shamp asked for public comment and noted that they received some letters from the public, which she opined should be partially read into the record. Ms.. Ekblad read from the first letter, signed by James and Nancy HARNER, on behalf of the Horner family trust whose property at 119 Andre Mar Drive is adjacent to the Mound House property and it is opposed to the rezoning and use of the lot for parking vehicles.

The next letter is from Robin Driskill at 365 Connecticut St. who could not attend but wanted to express that “a zoning change in the middle of a residential neighborhood is not appropriate.” She feels that this poses a danger to residents and does not understand the need for an educational kiosk within feet of the historical Mound House and feels that there are other options for parking. In addition, this letter includes a portion the writer said was taken from the FMB LDC online she feels says it all: *“Maintaining and improving the quality of life on FMB by restricting commercial activities from intruding into residential neighborhoods are public efforts. The success of these efforts will be proportionate to the degree of participation of the residents, property owners and the professionals who assist them.”* The writer continued on to say “your continued cooperation is appreciated by your neighbors and encourages a pleasant residential environment where permanent and seasonal visitors can enjoy life together on Estero Island...”

The third letter is from Jim and Barbara Higgins at 121 Andre Mar and it simple states their objection to the rezoning and they fear the change will lead to negative impact to their property.

At this point Ms. Shamp realized her neglect to swear any previous witnesses and the attorney did so here.

Nancy Harner spoke on behalf of their trust and said they live in a stilt house at the rear of the property, which they purchased many years ago. She again pointed out that

the LPA's job is to protect their residents and they do not want this lot in their neighborhood. She pleaded that the LPA not approve this project.

Mr. ??? of 364 Connecticut St. addressed the meeting and said he's lived there for 25 years. He said that this is the first time he has been aware of any public meetings regarding this lot and he and several neighbors came to voice their objections. He said the street is already a very busy one and signs don't help to keep extra traffic out. He objects to the lot and said that there is already a "commercial" building in this area (church) and the Mound House adds a second commercial property here even without the lot. He is also disturbed by the lack of a bicycle park on Estero "but we are willing to spend half a million dollars on (a) parking lot for 20 cars!" He added that "we already spend \$250,000.00 to purchase the property and now we have to spend \$300,000.00 to improve the property and we have to maintain that property with our taxpayer's money." He cannot agree with the cost or the project itself.

Ms. Barbara Hill said she lives in Shell Mound park, a permanent resident, and is a board member of CELCAB and a member of the Friend's of the Mound House. She voiced her support for the project and said that there were a few public meetings held for the project and residents came out in support of the plan. Ms. Hill said that the Mound House project as a whole is an exciting addition to the beach and the parking area is critical to its success.

Mr. Mike ?? of 159 Connecticut St. addressed the meeting and said he has been here for 21 years. He said it is a residential neighborhood and the church only has a full lot 1 day a week. He said through the years, there have been expansions and improvements as the Town grew and they were in favor of most of these projects, even the Mound House. Now, the church has opened a "day care" which he feels has turned into a playground and he doesn't want to live next to a playground, saying the kids are "screaming and yelling" everyday and they cannot do anything about it. He said that he was never notified about any meetings wherein he could voice opinions about these projects or he would have done so even with the church daycare. He heard about this meeting from his neighbor and said that he is very opposed to this project and doesn't want it. He said that the Town put in speed bumps on his street and now he hears the constant "boom boom" of cars driving over them. He also complained about the Town allowing the church to add a building to their property and now there are "2 houses over there and they put their garbage dumpster as close as possible" to his property. Now, he said, there is more noise at 5:00 AM when they pick up the trash and he doesn't "want anymore aggravation!" He feels his property value is going down more every day with all of these projects. He objected to terms in development plans like "it could...it would...it's contemplated..." and said that there needs to be concrete facts no matter how much time someone had to get the plans done.

Steve Stanley of 250 Connecticut St. spoke next and said he did attend the prior public meetings and was initially "for it but now I'm (he's) against it." He said that some people have been parking there "for quite some time" and people are walking

back and forth, putting people in harm's way. He said that Ms. Schober has reported that about 50,000 people have visited the Mound House and said most of those people are going to walk to and from the lot, not be escorted or driven. He said that when the traffic backs up on Estero Blvd. people already cut around to the Red Coconut to beat traffic and this will make that much worse. He also objected to extra lighting at night shining into his property and the added noise and activity making this area a serious problem. Mr. Stanley said that once this "goes commercial" there are no limits to what the residents will have to face. He feels that there needs to be a study to determine the effect of this on property values, adding that he bought his property based on the area, quiet neighborhood, etc. He added for the record, that even though he is within 50 ft. of the property, he received no notice of this hearing and he recommends that the LPA reject this proposal.

Shirley ???, 131 Connecticut St. spoke and said that she bought her property 19 years ago and feels that the Town should open the Mound House and see what happens first with the spaces they already have and decide later whether they need the additional parking or if some other option can be developed.

Ms. Ceil Spuhler addressed the board and said she is a member of the Friend's of the Mound House and CELCAB. She said knowing what she does through being part of process, she can understand what the neighbors are feeling. She gave a short history about how this was developed and said asked that the public imagine how the parking situation will take shape if this plan is not put into place. She talked about nights in the past when there were holiday events, etc. taking place there and said that this will continue but by parking the cars in a lot, there will be less chaos and less danger. She said 2 things to weigh here are is the parking around the Mound House going to be less of an impact than the parking lot because people are going to visit the property no matter...it is a museum.

Carol Geison, 421 Connecticut St. said that people do not obey and they ignore the signs that tell them where to park. She agrees with her neighbors who oppose the lot.

Mr. Norbert Demars, 125 Connecticut St. repeated again what others have referred to in the LDC that the LPA is to protect the residents and he feels that the Mound House was a "mistake 10-11 years ago." He said that Council has had many opportunities to correct this mistake but they continue to support this property. He said that it was commercial intrusion into residential neighborhoods that formed the basis for incorporation several years ago and now "the people that we authorized to represent us want to ruin our neighborhood." Mr. Demars also wondered if the LPA has asked the developers "what would happen if we don't approve this?"

Mr. Lee Melsick addressed the meeting and said that he thinks that more important than the LPA dealing with 27 parking spaces is the subject of single-family neighborhoods on the island. He said that there is more and more intrusion into those residential areas and it needs to be controlled. He agreed that the purchase of the Mound House property was a mistake years ago and said that the LPA can change this

pattern starting with opposing this parking lot in the middle of a residential neighborhood.

LPA testimony and questions for staff:

Town attorney asked staff for acknowledgement as to affirmation of truth in testimony; all staff acknowledged same.

Ms. Shamp asked if letters were mailed out in notice of this meeting and whether they are required by the LDC. Mr. Fluegel said that letters were mailed and provided copies of the labels, although some may have been sent to wrong addresses. The code does not require that. Shamp also asked if the church lot has lighting but no one knows for sure. She also asked if there is room for additional parking on the Mound House property. Ms. Schober said there are 2 areas that are not archeologically or historically sensitive where parking could be installed but she doesn't know how many spaces it could provide until an engineering report is done. She added that the original plan, with parking in the right-of-way, went to Council a few years ago but the Council removed those spaces. And Ms. Shamp asked the suggested question "what will happen if the LPA does not approve this parking lot?" Mr. Fluegel said their recommendation would go to Council who has the final say, but with the LPA's opinion.

Mr. Kakatsch asked if there is a possibility of widening Connecticut St. and Ms. Schober said the documents regarding this are in their packets. He asked if there will be a walkway added and, since Ms. Ekblad said the residents didn't want one, he assumed that means people will walk in the street, which he pointed out is narrow in that area and dangerous. He recommended that all of the members, and staff present, actually go to the property and walk in this area to experience the danger.

Mr. Fluegel clarified for the record that this is not a commercial rezoning and added some comments for further explanation. He said that the CPD process allows for the LPA to look at this property and add restrictions to the proposal which would provide a more controllable rezoning or special exception of the property.

Testimony portion closed; LPA discussion opened:

Mr. Kosinski said he is in full support of the Mound House, in general but feels they should proceed cautiously before changing this neighborhood. He added that they should have the property opened for a time first to see how it operates and then revisit this issue at a later time.

Mr. Zuba agreed and wants a more complete picture of the finished package from the developer, as well as a more precise look at the budgetary concerns to be sure there is funding to complete the project rather than starting it only to run out of money before completion.

Ms. Kay also agreed and said that the Town incorporated basically to protect the residents and she also feels that the whole project should be completed before they

consider the parking lot area.

Mr. Kakatsch also agrees and said that there should be an inquiry to the church to see if it is possible for the Town to rent some of their lot space. He also agrees that the walkway issue is extremely dangerous.

Mr. Van Duzer agreed with comments by one of the earlier speakers in the audience and said that this agency cannot evade the Comp Plan to approve this. He said there are other options, including the right of way on Connecticut St. which he feels can be used to sidewalks. He admired what CELCAB has done with the project but he cannot recommend approval of the plan as it stands now.

Ms. Shamp reminded that the task before them is not how they personally feel about the Mound House, but it is about the rezoning plan for the parking lot. She said that there is difficulty in just defining what type of rezoning this is because it is tourism, which is a commercial interest, and this is trying to put that commercial interest into a residential neighborhood. She also agreed with the other members in that this is a conflict with the rezoning, and referred to the report itself, wherein the conclusion states *"if the request is in conflict with the criteria in LDC Sec. 34-8 regarding zoning exception,"* and asks if there are conflicts. She feels that there are conflicts, such as with policy 4c3-#6, which points out in the ending quote *"commercial activities that will intrude into residential communities because of their type, scale or orientation, shall not be approved."* Additionally, Sec 34-85, which staff has used as basis, she refers to "K" which directs considering *"whether the request is compatible with existing or planned uses and not cause damage, hazard, nuisance or other detriment to persons or properties."* Ms. Shamp feels that this proposal poses many risks and used another example, referring to "L" which covers considering if the location will pose an undue burden on existing transportation or services and there is discussion of a trolley of some type. Ms Shamp went on to read the other sections to be considered and feels that each creates a conflict; thus, she cannot support this proposal.

Motion: Mr. Zuba moved the LPA deny the request for rezoning due to the inconsistency of rezoning a residential area to commercial, the incompleteness of the plan and the lack of connection between the pedestrian walkway and addressing the potential population usage of the Mound House by occupants of the parking lot. Ms. Shamp added references to 4c3 and Sec. 34-85 that the request is in conflict with LDC 34-85 regarding zoning.

Seconded by Mr. Kakatsch;

Vote: Motion passed 6-0.

Hearing closed at 11:16 AM.

Short recess.

Meeting resumed at 11:27 AM, without Mr. Kosinski who was excused due to illness.

B. LPA Membership Requirements Workshop

Mr. Fluegel said that Council directed staff to address a code amendment regarding LPA members serving on other committees and is asking for the board's thoughts and recommendations for this. He gave recommendations as to possible criteria for future members.

Mr. Zuba feels that membership in too many committees takes away from other people serving and puts too much weight on the member in terms of commitment. He feels also that residency is important.

Ms. Kay agrees with Mr. Zuba's opinions.

Mr. Kakatsch said that he applied to serve on the MRTF and doesn't see a problem with serving on that and the LPA. In addition, he owns "quite a bit of property on this island" and even though he lives in Ft. Myers, he feels he is a resident. Mr. Kakatsch feels that this workshop is directed at him because he chose to homestead his Ft. Myers residence and he was upset that he is being made an example of. Debate took place between Mr. Fluegel and Mr. Kakatsch about the residency issue.

Mr. Van Duzer opined that anyone who owns property on the island should be allowed to serve.

Ms. Shamp read the residential requirement, Sec. 34-13, as it is currently written "all members must be residents, or owners of real property located within the territorial limits of the Town of FMB at the time of membership on the LPA and during the period of service on the LPA. She asked for a show of hands for those interested in changing that. Mr. Zuba interrupted and referred to Ord. 08-11, passed on Sept. 15, 2008, which amended FMB LDC Ch. 34 regarding the conditions for membership on the LPA. He said it reads "*if otherwise qualified, a member may be repeatedly appointed to an additional term by Town Council and may serve on other committees.*" He pointed out that the word "resident" is not defined specifically and he feels this could include renters. There was a consensus of the 5 members that this should remain the same.

No members were interested in the makeup of the board. The last point of discussion was the topic of membership on other committees. Ms. Shamp said she does not agree that LPA members may not serve on other boards but does believe that LPA membership is much more demanding. Discussion ensued.

Ms. Kay supports members not being allowed to serve on other committees. Of the members present 4 feel members should not be allowed to serve on other committees.

C. EAR Process Review

This is the Evaluation and Appraisal Report which is a 5 year assessment of the Comp Plan, mandated by the state. This is due in April 2012 so there will likely be a more in depth presentation next month, according to Mr. Fluegel and he said it is a very

important tool for them. He would provide a copy of the Comp Plan to each member during the lunch break.

V. ADJOURN AS LPA AND RECONVENE AS THE HPB

Motion: Mr. Van Duzer moved to adjourn as LPA and Reconvene as HPB.

Seconded by Ms. Kay;

Vote: Motion passed 5-0.

Meeting commenced at 12:10 PM. Ms. Kay stated that the HAC did not meet this month but will meet later this month. Mr. Fluegal said that he met with Russ Carter to discuss the presentation ceremony, suggesting scheduling something at the end of the month or early March at his home so attendees can tour the house. He again reminded the members to email Ms. Ekblad with their suggestions for invitees.

Ms. Shamp asked about the status of the sign ordinance and Ms. Kay reported that the first hearing was yesterday when Council decided to take over the issue. They suggested that the LPA would look over the criteria and decide whether a sign should be historically designated and then send it to Council who will do the same thing. Ms. Kay feels this is redundant and was not happy with the suggested process but it will come up again at their next meeting.

Motion: Mr. Van Duzer moved to adjourn as HPB and reconvene as the LPA.

Seconded by Mr. Kakatsch;

Vote: Motion passed 5-0.

VI. ADJOURN AS HPB AND RECONVENE AS THE LPA

Meeting was reconvened at 12:15 PM, with the same members still present.

VII. LPA MEMBER ITEMS AND REPORTS

Mr. Zuba asked Mr. Fluegel for a status report on the Seafarer's project and said he asked this earlier in the week in an email as well. In addition, he would like to have the environmental officer give some analysis of the Nature Conservancy report on water quality in Estero Bay. Mr. Fluegel said that there is "a dialogue that is ongoing" on the Seafarer's property but there is no decision as of yet but the property across the street, beachfront, is moving forward through the permitting process. Ms. Shamp asked what kind of permits are being issued since this is a CPD. Mr. Fluegel said this is just going to be a "beach park at this point" including some landscaping and some handicapped parking, etc. More discussion took place about the planning and the problems that may come up.

Ms. Kay commented about the Seafarer's property and said it's going on too long. Mr. Kakatsch agreed and said this is a "disgrace" property for the beach the way it stands. He also asked for a status for the port-a-potties for the beach and Mr. Fluegel gave a few of the locations he thought were being picked for these, but he wasn't sure. He was frustrated that the LPA was not involved in the placing of these units and wants to ask the Council to allow them to give some input into placing these.

Ms. Shamp discussed her concern with the section in the LDC regarding public hearings, 34-216b1 "after the LPA's hearing, an application for a planned development together with all information and staff reports, LPA's minutes and resolution of recommendation..." and said that the LPA is still not having resolutions. She said they should have had a resolution, to which Mr. Fluegel commented "it's in your back-up on this..." and pointed it out to Ms. Shamp asked where it is. Mr. Fluegel said the one in the packet will need to be modified based upon their vote; it is Resolution #11-003.

Mr. Kakatsch also commented about the Farmer's Market location and feels there is a liability issue with holes in the ground, etc. He recommended a "general spruce-up" on the property and "regular maintenance." Mr. Fluegel said he would pass those comments along.

VIII. LPA ATTORNEY ITEMS

Ms. Miller had nothing to report.

IX. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Mr. Fluegel gave his comments regarding the following segment, adding that the Surf Club and Mermaid topics will be coming back with modified applications for the COP to cover their entire properties. These applicants said they did not intend to limit consumption to their deck. Ms. Shamp asked for a description of "their entire property," for the Mermaid Club. Mr. Fluegel said this is an interesting point because he is not sure what that includes. Ms. Chapman opined that their strap number does not go all the way to the beach and Ms. Shamp said she feels that if one of these comes before them and it

does go to the beach, the LPA will need a very lengthy report to properly consider it.

X. LPA ACTION LIST REVIEW

- Special exceptions-Surf Club and Mermaid Lounge-Van Duzer/Kay
- Shipwreck-Continued at LPA request-May 10, 2011

Future Work Activities

- ROW Residential Connection; Van Duzer-TBD
- LDC 613-14 10-25 Storm Water-TBD
- Parasail, jet ski ordinances-TBD; Fluegal
- IPMC (code enforcement clean-up)
- Post-disaster reconstruction/recovery-TBD; Ms. Miller
- ISO (relates to FEMA)
- Connecticut St. resolution-March meeting; Mr. Zuba

XI. PUBLIC COMMENT

No comment.

XII. ADJOURNMENT

Motion: Mr. Kakatsch moved to adjourn.

Seconded by Ms. Kay;

Vote: Motion passes 5-0.

Meeting adjourned at 12:42 PM.

Adopted _____ with/without changes. Motion by _____
(DATE)

Vote: _____ Signature: _____

- End of document

MINUTES
FORT MYERS BEACH
Local Planning Agency

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

Tuesday, March 8, 2011

I. CALL TO ORDER

Meeting was called to order at 9:03 AM by Chairperson Joanne Shamp. Other members present:

Bill Van Duzer
Joe Kosinski-late
John Kakatsch
Hank Zuba
Rochelle Kay
Carleton Ryffel

LPA Attorney Marilyn Miller

Staff present: Community Development Director Walter Fluegel, Tina Ekblad, Planning Coordinator; and Keith Laakkonen, Environmental Coordinator

II. PLEDGE OF ALLEGIANCE and INVOCATION

Ms. Kay

III. MINUTES

A. Minutes of February 8, 2011

Motion: Mr. Zuba moved to accept the minutes, as recorded.

Seconded by Ms. Kay;

A few name spelling corrections were noted.

Vote: Motion passed 6-0.

IV. PUBLIC HEARING

Ms. Shamp opened the hearing for Ordinance 11-02 Flood Management, acknowledging the Affidavit of Publication of Legal Advertisement and asking Ms. Miller to read the caption: *"An ordinance of the Town of Fort Myers Beach amending the floodplain regulations and references to the Federal Flood Insurance Study and Flood Insurance Rate Maps in the LDC, adopting amendments to Article 4, Floodplain Regulations of Chapter 6 of the LDC, titled 'Maintenance Codes, Building Codes and Coastal Regulations,' and which provides article 4 Floodplain Regulations, Division 1, providing authority, providing for conflicts, severability and establishing an effective date."* Ms. Ekblad referred to information she had forwarded to each member regarding a visit

from Florida Division of Emergency Management and the results of that visit. This ordinance addresses some of the federal regulations missing from the Town ordinance and helps to clarify certain other parts.

There were a few questions regarding clarification of wording and identification of personnel involved with brief discussion.

Ms. Shamp asked for public comment; there were no comments. Ms. Shamp welcomed further discussion and comments.

Motion: Mr. Ryffel moved to approve the ordinance.
Seconded by Mr. Kakatsch;
Vote: Motion passed 6-0.

Hearing closed at 9:18 AM.

V. ADMINISTRATIVE AGENDA

A. EAR Presentation

Ms. Ekblad offered a PowerPoint presentation about the EAR (Evaluation and Appraisal Report) and said it is the foundation to revise the Comprehensive Plan, required by the Department of Community Affairs every seven years. She said it is also required that the Town have "Scoping" meetings, which are used to determine the scope of review for the report, and must be completed a year prior to the adoption date. Adoption date for the Town is April 2012 and, she said, the LPA is required to hold at least one public hearing prior to making recommendations to Council. Ms. Ekblad continued with the presentation and pointed out items in the handouts.

Mr. Fluegel asked that the LPA review and offer their opinions and views about this ordinance. He added that they need to do a series of public workshops and asked for their help in reaching many different stakeholders for their input.

Ms. Shamp asked how definite is the "due by" date and Ms. Ekblad explained that she has constant communication with the DCA and, as long as they are working on this plan, the time limit has some flexibility. Ms. Shamp said that perhaps the HAC and the HAB could look at the historic preservation element of the Comp Plan and Mr. Fluegel agreed. Mr. Ryffel asked if the scope can be changed once they've had the scoping meetings. Mr. Fluegel said that it should be an ongoing communication.

Ms. Shamp asked for an explanation of the scoping meeting process since their first meeting is scheduled for April. Ms. Ekblad said she will bring the main discussion points to the LPA before the meeting so they have the time to prepare their comments, but they need to bring other issues regarding this to the meetings to add to the discussion. Mr. Fluegel added that there will likely be surveys distributed and hopefully an informational section on the website for input from the public. He added that there is a possibility that LPA members can be invited to join staff at their meetings and workshops with stakeholders and Ms. Shamp was in agreement with

this.

B. Parasailing Ordinance

Ms. Shamp noted that this is not a hearing but just an introduction of the ordinance that will go to hearing in the future.

Ms. Miller advised the LPA that this came up in the fall when a vendor at Seafarer's had to move because of the pending sale of the property. It was discovered then that there is some ambiguity in the wording of Sec. 27-55. She said that Council then interpreted the original meaning of "non-conforming parasail" and decided that any existing parasail business (conforming or not), could move their license to a new conforming location as their intent was not to put an existing business out of business by not allowing the transfer of license. Ms. Miller yielded to Mr. Laakkonen to give further explanation. He said that originally there was intent to cap the licenses at a certain number and this system has worked well for the Town for several years but the wording is confusing as it stands. There is a reference to Sec. 27-54e, which does not exist, so this will be removed from the ordinance but otherwise, he insisted, nothing else changes in the ordinance. There was discussion about the cap number of licenses and conforming locations, which was explained to be any location not within 500 ft. of another parasail vendor.

Public Comment:

Dory Smith, owner Paradise Parasail, Inc., read her statement regarding specific areas of the Sec. 27-55, availability of the parasail licenses (see statement) to the board. Basically she is concerned about the effect that the revision of the ordinance would have on the number of licenses issued, especially in terms of "co-location" of parasailing and personal watercraft businesses.

Ms. Shamp asked the attorney if the proposed revisions address Ms. Smith's concerns and asked if the subject of "co-location" is being dealt with fairly. Mr. Laakkonen said that there is nothing that would need to be revised to "encourage the spirit of co-location" which is a "good thing." Ms. Miller said there will be a review of the language to be sure that they clarify to encourage this and Ms. Shamp confirmed a consensus of the members in agreement with this.

VI. ADJOURN AS LPA AND RECONVENE AS THE HPB

Motion: Mr. Ryffel moved to adjourn as LPA and Reconvene as HPB.

Seconded by Mr. Kakatsch;

Vote: Motion passed 7-0.

Meeting commenced at 10:00 AM and Ms. Kay stated that the presentation of the historic cottage plaque went well, lasting about 20 minutes, and they now have a regular program for addressing these.

The HAC met on Feb. 15 and it was mostly covered the presentation program to be able to follow in future presentations. The next one will be the Pink Shell, with the

Mound House possibly after that. The vista signage project will be addressed and Ms. Ekblad will research grants for this project. She said the next meeting is March 22.

Motion: Ms. Shamp moved to adjourn as HPB and reconvene as the LPA.

Seconded by Mr. Zuba;

Vote: Motion passed 7-0.

VII. ADJOURN AS HPB AND RECONVENE AS THE LPA

Meeting was reconvened at 10:08 AM, with the same members still present.

VIII. LPA MEMBER ITEMS AND REPORTS

Ms. Shamp and Mr. Van Duzer wished Mr. Kosinski luck in the election and thanked him for his service to the LPA.

Ms. Kay asked when the rental item will come before them and Ms. Miller said they are meeting about it today. She also asked about the signs at the Lani Kai and the Holiday Inn. Mr. Fluegel said the Holiday Inn came in with a permit which the Town denied since it didn't meet the criteria for the landmark designation but they are in talks about what is permitted and what is not.

Mr. Zuba asked Mr. Fluegel for the analysis of the Nature Conservancy report on water quality in Estero Bay that he asked for last month, especially since Mr. Laakkonen is present; Mr. Fluegel apologized and said he forgot but "will get that for you." He also asked about rental units and if the proposal will include inspections, as well as why this issue would come to the LPA. Mr. Fluegel explained the LDC involvement and the Chapter 34 items which come to the LPA. Mr. Zuba feels that this is important and should come before the LPA. Mr. Fluegel pointed out that the LDC is specific about things that come to the LPA and what authority they would have in this area.

Mr. Kakatsch commended the Town for the "great job on the north end" and he encouraged them to continue that work to the south end. He asked about the status of some buildings across from the Newton Park saying that they are unoccupied and have been in terrible shape for quite some time. He wondered what they can do to address this as there are homeless people sleeping around there and it is unattractive as well as unhealthy to the beach. He also commented about the lack of bike paths and the fact that this is a safety concern too.

Mr. Fluegel said that he will try to deal with these properties through code enforcement and Ms. Miller will also check into this. He also talked about the situation with the bike paths and sidewalks and said that he has begun checking into school grants and funding for some of this. Discussion ensued about this and possible funding avenues.

Mr. Van Duzer said that there are no pedestrian sidewalks on the beach as they were actually put in as bike paths years ago.

Ms. Shamp commented on what Mr. Zuba brought up earlier and say that the role of the LPA is to be supportive and assist the Council, providing an additional review for LDC

regulations, ordinances, etc. to be sure they are fully vetted and feels that the rental unit issue should be reviewed by the LPA, especially as stated in LDC Sec. 34-121.1 wherein it states "prepare recommendations for changes to boundaries of various zoning districts or the regulations applicable thereto." She feels that the rental issue is certainly one that is a regulation within specific zoning districts where short term rentals are allowed and an attempt to skirt the LPA by researching whether an ordinance needs to be heard by them diminishes the intent of their function.

IX. LPA ATTORNEY ITEMS

Ms. Miller had nothing to report.

X. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Mr. Fluegel responded to Ms. Shamp and said "in no way, shape or form is staff trying to skirt the LPA" as they are required to follow the code and are directed by Council. He added that he must follow the advice of the attorney and if something is supposed to be reviewed by the LPA, it will be brought to them.

XI. PUBLIC COMMENT

Mr. Melsick commented about Seafarer's and said it is "the island's biggest slum" and it needs to be torn down. He said that the LPA should demand that the county remove its slum at the beach and he has no knowledge of any negotiations for the sale of the property by the county.

He asked that the LPA insist that the county to "retake its right-of ways" along Estero Blvd. and maintain them since the Town needs the property to progress on any of its projects.

XII. LPA ACTION LIST REVIEW

Resolutions to Town Council

- Special exceptions-Surf Club and Mermaid Lounge-Van Duzer/Kay
- Shipwreck-Continued at LPA request-May 10, 2011
- Sign ordinance-goes to Council on April 18; Kay/Kakatsch
- 216 Connecticut-April 4; Kay/Kakatsch
- Flood plane-April 4; Kay/Kakatsch
- Parasail, jet ski ordinances-April meeting

Future Work Activities

- ROW Residential Connection; Van Duzer-TBD
Ms. Shamp explained that this has been dragging on for a long time and going back and forth and believes that the ROW maps should be updated by now. She said this was a top priority before. Mr. Fluegel said was not aware of the new maps but said that he will check into this. Mr. Ryffel added that this was a very important issue and has gone too long without the attention it needs.
- LDC 613-14 10-255 Storm Water-TBD
- Post-disaster reconstruction/recovery-TBD; Ms. Miller

- IPMC (code enforcement clean-up) possibly April
- COP ordinance

Ms. Shamp reminded the members to continue to read their copies of the LDC.

XIII. ADJOURNMENT

Motion: Mr. Van Duzer moved to adjourn.

Seconded by Ms. Kay;

Vote: Motion passes 7-0.

Meeting adjourned at 11:04 AM.

Adopted _____ with/without changes. Motion by _____
(DATE)

Vote: _____ Signature: _____

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MINUTES
FORT MYERS BEACH
Local Planning Agency

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

Tuesday, April 12, 2011

I. CALL TO ORDER

Meeting was called to order at 9:02 AM by Chairperson Joanne Shamp. Other members present:

Bill Van Duzer
John Kakatsch
Hank Zuba
Rochelle Kay
Carleton Ryffel

LPA Attorney Marilyn Miller

Staff present: Community Development Director Walter Fluegel, Tina Ekblad, Planning Coordinator; Keith Laakkonen, Environmental Coordinator

II. PLEDGE OF ALLEGIANCE and INVOCATION

Ms. Kay

III. MINUTES

A. Minutes of March 8, 2011

Motion: Mr. Ryffel moved to accept the minutes, as corrected.

Seconded by Mr. Kakatsch;

Vote: Motion passed 6-0.

IV. ADMINISTRATIVE AGENDA

A. EAR Report

Ms. Ekblad referred to the information in the member packets and asked for member input as to the timeline and survey included, as well as their opinions regarding the major issues for the town in the Comp Plan. Mr. Fluegel added that they specifically seek the LPA opinions about the survey and how they feel it should be distributed to the community. He also again asked that they consider the need to do a series of public workshops and asked for their help in reaching many different stakeholders for their input.

Mr. Zuba suggested more clearly defining the purpose of the study and Mr. Fluegel said that this is a good idea. He also feels that the terms and verbiage be simplified a

bit for laymen and gave some examples.

Mr. Ryffel stated he would add a glossary to the report and suggested giving the survey to some staff members who are not involved in planning and having them try to fill it out. He agrees that there is too much unnecessary verbiage that may confuse residents. He also suggested that there be a SASE included with each survey to encourage return mail. He also feels that there should be a "cat walk" on the bridge.

Ms. Shamp agreed with the others and feels that mailing the surveys with the water bills, along with newspaper announcements, is a good idea. She wondered why there wasn't anything in the surveys about code enforcement and feels that topic should be included. She suggested some types of stakeholders to include like former LPA and council members, code enforcement people and bike groups. Ms. Shamp made many more suggestions in other areas, including futuristic planning for Bay Oaks and beach nourishment, and feels that those knowledgeable in these areas be surveyed. Overall, she said that that staff has done a good job on the report so far.

Ms. Shamp also suggested perhaps using a tram to transport visitors onto the island from a parking area off island.

Ms. Kay asked about a few points in the survey and commented that there is a great deal that is irrelevant, suggesting that it needs more work.

Mr. Kakatsch said he added some comments regarding code enforcement and likes all of the work that has been done in the north end, hoping that the work continues to the south end.

Mr. Van Duzer feels that the Comp Plan doesn't need to be rewritten only edited and updated. He feels that the most important thing is having code enforcement actually enforce the current rules, especially as regards to rentals, so that the resident's rights are protected and respected.

Mr. Fluegel referred to the topic of architectural theme and said that choosing the wording to be used was challenging but the idea was to ask first if there should be a standard theme, and second, if so, what should it be. He said that the point is to keep open all the possibilities in the respondent's mind and he asked for the LPA's input and suggestions for wording this in a way that would work. He discussed the topic of mixed use and Mr. Ryffel said that this is mute because the island is "built out" and there is no more room for development. He said that there needs to be a better definition of what they feel is to be mixed use. Discussion ensued about the regulations that will apply for expansion and development, including FEMA regulations.

Mr. Kakatsch pointed to the "off island" area of San Carlos Island and wondered if the survey included that. Mr. Fluegel said it does not.

Mr. Zuba suggested bridge tolls as a possibility to consider. Ms. Shamp added that adding another lane to get cars off the island would be helpful to address the growth issue. Mr. Fluegel asked the members if including a question about the impact of short term rentals would be a good addition for the survey; they agreed it is a good idea and discussion took place about the wording of the question.

Ms. Ekblad asked the LPA's opinion about the education or comprehension level of the typical islander in terms of their understanding of regulations for construction in the "V" zone in the event of a natural disaster requiring rebuilding of their homes. Ms. Shamp said that she herself was in this position when she bought her home and feels that there should be a required document or something to be given to anyone who purchases beach property in the "V" zone.

Mr. Kakatsch asked what the FEMA rule is for places that are "grandfathered" on the first floor is there is a flood, etc. He said if I pay for flood insurance, this should be covered. Ms. Ekblad said that there is a review of properties after a storm "and if the cost is over a certain amount, you cannot build back what you have today" referencing construction below base flood elevation.

Mr. Zuba said there are 2 issues: are the residents aware of the flood regulations affecting their homes and do the residents understand the "V" zone implications in the downtown area. He opined that the residents should at least have this information.

Ms. Miller commented about perhaps changing the wording in the architectural section to making it easier to understand.

Short recess (5 minutes).

B. COP Ordinance

Mr. Fluegel referred to the draft he passed out to the members and asked for their thoughts and comments. He said that staff crafted this with an "administrative approval" approach for existing places with COP who may want to expand that just a bit. The applicant would apply and there would be a host of conditions along with the "administrative approval." He said that the other component of this is recognizing future uses. His example is a new restaurant coming onto the beach with a request for COP; this would automatically require that to be a special exception, needing them to request the COP extension at that time, removing the possibility of them doing a future "administrative approval." Mr. Fluegel pointed out a few of the items in the draft and said that there is also the possibility of tables being put on the beach. He asked for LPA opinion of this intrusion as well.

Ms. Shamp reminded the members of their responsibilities according to the Comp Plan and said that they need much more information to review this and the draft is not enough. She said that they would like information on the decision that was made in 1999 regarding this. She also asked what the state regulations are and said that other local beaches don't seem to have alcohol being served there and she wonders if there

are state laws in play here.

Mr. Van Duzer said that he is “thoroughly opposed to further selling of alcoholic beverages on FMB” because it is a family island and he wants to keep it that way.

Mr. Kakatsch seconded that, adding that he feels just as strongly about this subject. Ms. Kay said that having the option of an administrative approval for COP is an “end runner around the LPA” and she is surprised to see it.

Mr. Ryffel said that he does not like the idea and feels that there would need to be a Comp Plan amendment to what is envisioned for “recreation,” as this is a land use policy. He referred to Policy 4B8 “undevelopable portions of the beach” and said it doesn’t fit into the category. He said if this should go forward, it would need to have some type of geographic limit, basically Times Square, and he thinks it’s just a bad idea.

Mr. Zuba stated that this process is flawed pointing out that there is no section for fees, costs, etc. He also commented that he feels staff is being asked to move this along without taking it back to the LPA.

Ms. Shamp said that the LPA resolution 2009-24 was rejected and it was indicated that the LDC was the more appropriate spot to look for direction for this. Ms. Shamp then referred to Sec. 34-652 d, under districts, and said that in EC districts “no land or water use shall be permitted by right, except for those uses and developments permitted by the FMB Comp Plan in wetland beaches or critical wildlife.” She also pointed out 34-1574 b “except in instances of overriding public interest, new road, private land development or the expansion of existing facilities in wetlands or sandy beaches that are designated in the recreation category in the FMB Comp Plan shall be prohibited.” She pointed out many other sections that apply and are cause for concern, specifically the property rights issues it presents, and feels strongly that this is a huge community welfare item in need of very careful research. Ms. Shamp voiced her strong concern that there is not enough information to support this and she needs to be sure this does not go against the LDC.

Mr. Ryffel said that he would like to have a list of all of her concerns, specifically as they apply or not to the LDC and/or Comp Plan so that he can have the time to actually look into each of her points and make his own decision.

Ms. Kay whole-heartedly agreed and said this is “poor precedence” and not the way the town should be getting things done. Ms. Shamp restated her idea of what the LPA’s job is as far as reviewing these issues and making recommendations. She said they need an “objective evaluation” of the LDC if that is what this is to be based on. Again, she said the “first and foremost role of the LPA” is to make sure these proposals go along with the LDC and the Comp Plan and just to accept that the “Council wants to do it” does not satisfy their rule. She also asked for a written report from Environmental Services, Mr. Laakkonen, to report what the environmental issues associated with these changes would be.

Mr. Fluegel said that the issue of whether or not COP is a permitted use in the recreation future line category has been decided by Town Council and any reconsideration must be in the form of a Comp Plan amendment. Since Council overturned the LPA decision, Fluegel said there will be no analysis as the Comp Plan section is closed. Ms. Shamp said that what Council said was that it wasn't based in the Comp Plan but in the LDC and the LPA never saw that. Mr. Fluegel said that what they have before them is a draft amendment to the LDC to enable the decision that they have made. He said the LPA can comment on this or chose to recommend denial and have no voice going to Council in this ordinance. She asked if he means that the LPA has no right to request further information to see if there is basis in the LDC to support this when it was never asked of the LPA previously. Fluegel answered that "we're not going to reconsider the Comp Plan to the extent that you give us things from the LDC that need to be considered, we'll look at those and evaluate those." Ms. Shamp said that they understand that council rejected the LPA's evaluation based upon the Comp Plan and the request was to base it then on the LDC. She continued that the functions of the LPA include that they need to do this but they have not been the basis within the LDC to show them that it is appropriate. She stated that the LPA has not been afforded the opportunity to decide whether this is an ordinance to be brought forward in accordance with the LDC.

Mr. Fluegel reported that Town Council decided that the LDC was the more appropriate place to deal with this and their determination said it is a permitted use in the future land use code; thus what is before them is how this is dealt with in the LDC. He said it requires no further analysis as to whether it is permitted by the LDC; this has already been decided by council. Ms. Miller interjected that should there be "some current language in there that could be construed as not permitting it, they would want that amended." Fluegel continued that the LPA could give details as to what sections they feel are in conflict but if they are to "collectively recommend denial of this, then what is the purpose of doing the analysis?" Ms. Shamp cited a few of the sections, but Mr. Zuba interrupted to say these have already been outlined. He said that the questions the LPA has are "has Council given us an opinion on this in terms of its consistency with the questions the Chair has raised;" "is staff going to ignore what is being raised on the LDC issues or are you just going to proceed?" Mr. Fluegel said "we'll go back and look at them as to their relevance, but to expect us to come back with a bunch of work product, analysis and work studies...that's already been done in the Comp Plan interpretation and Council has rendered an opinion, I'm not going to tread across the boundaries of that opinion." More discussion took place as Mr. Fluegel gave the LPA their choices: to recommend denial or to recommend specific changes to the ordinance. Mr. Zuba repeated that they cannot make any kind of recommendation without sufficient information, saying that "you're asking us to approve or deny. We're begging for information so that we can make a rational decision and you're saying 'you guys can't have it because the Council's already decided.'" There was some argument as Mr. Zuba and Mr. Fluegel attempted to clarify their positions to each other and Ms. Shamp pointed out several areas where they will make decisions and the conflicts created in comparison to previous special

exceptions. Shamp continued to refer to the document and specific section that will be affected by decisions when Mr. Zuba interrupted with "you've reiterated those points very well but I think staff is saying those aren't relevant." He said he agrees with her points but feels "what's being said is 'you don't matter.'" Ms. Shamp summarized with the fact that their feeling is the LPA cannot make any decisions without more information. She said the LPA's concern is that they not go against the LDC so they need certain things to be able to proceed, and she added that their authority gives them the right to ask for these things.

Mr. Fluegel said he would like each member to provide staff with their specific commentary regarding the ordinance for the next meeting. He continued that the code analysis for a recommendation for denial is something he will "tread very carefully on" as it is the authority of the board to come up with that. Staff will look at what sections they are given and make a determination of what is needed to address those sections. He said that the LPA then gets to make their recommendation to Council and staff will remain neutral on that since their job is just to bring it to the board. He said he is looking for constructive input and he is hearing that they are just going to recommend denial. Ms. Shamp argued and said told Mr. Fluegel that "when you're sitting in that chair at the LPA, you are providing the information that we ask for; when Ms. Miller sits in that chair, she is not the Town attorney, she is the LPA attorney," and said that according to the LDC, the LPA has the right to ask both of them for the information they need to do their job. She added that for Mr. Fluegel to "say that you cannot provide the LPA the information to show us where it is against the LDC, to me is wrong." Ms. Miller replied she mentioned this earlier, that if there are areas of concern they may need amendments, like the EC Zone. More discussion ensued about many of the areas in the LDC and how some sections are based on the Comp Plan, as well as proposed changes in uses.

Mr. Ryffel said he agrees with Ms. Shamp that they need certain information and should have, but he realizes that they "are not gonna get it" so he feels that they should all give written comments about the draft to staff and discuss it at the next meeting, in an attempt to work this out.

Mr. Kakatsch suggested that they reject this but would agree to list and present their concerns. Mr. Zuba interjected that they have all asked about and voiced their concerns about these changes and there has been no response. He feels that they are just not going to be heard by Council and "that's just the way it's gonna go." He opined that they consider an ordinance to be brought to the Council that requires a super majority to overturn their opinion so it gets a bit more attention.

Mr. Van Duzer suggested making a recommendation to Council that this is not in the best interests of the citizens of FMB and therefore they cannot recommend approval. Ms. Miller pointed out that this isn't at that stage yet, as it is only a "very rough draft." More discussion ensued about making any recommendations or changes without much more information and some research on the part of the LPA.

Mr. Fluegel said that this ordinance will come with a staff report and reminded the members that “there is a boundary here” between the issues with the Comp Plan that have already been decided and the direction that staff has received from Council to “go do this.” He added that “tens of thousands of dollars were spent on a special study that was the basis of your determination that dealt with a lot of the issues that you brought up...to that extent, those are issues that are water under the bridge from our prospective.”

Mr. Ryffel said he intends to respond now whether or not the rest of the members do. He said this is upsetting to everyone and said one of his legal concerns is that most of the COPs were part of a special exception and some as part of a planned development. Mr. Ryffel wonders what the ramifications of expanding this after the fact will be. Mr. Fluegel replied that he has a valid point and staff knows they need to look further into this but he said that in each instance these are in a different district, it’s a continuation of the use across the zoning line. They continued to debate their opinions as more discussion ensued. Ms. Shamp added that she would also like to know the locations of these properties because it is difficult to understand the implications not knowing where they are.

Ms. Kay commented about the “tens-of-thousands of dollars” report that Mr. Fluegel brought up and said that it was not requested by the LPA and they didn’t want it. She said it was done by the former Town manager and she wants to record to be clear that they didn’t need this.

Mr. Fluegel said this will probably be best handled next in the form of a public hearing. Ms. Shamp reminded that they are not well prepared for a public hearing yet since they are not being given sufficient information to make an educated decision, and feels that this type of arguing would not be proper in the public hearing arena. She suggested a second meeting of the LPA to discuss this and then prepare a document to Council that goes forward in the public interest.

Motion: Mr. Kakatsch moved to oppose the amendment.

Ms. Shamp opined that this is not an appropriate motion at this time and asked for direction from the attorney, moving instead that there be another meeting before this moves forward. (More discussion supporting extra time to provide the LPA with information to prepare a well researched document).

Motion failed.

V. ADJOURN AS LPA AND RECONVENE AS THE HPB

Motion: Mr. Van Duzer moved to adjourn as LPA and Reconvene as HPB.

Seconded by Mr. Zuba;

Vote: Motion passed 5-0 (Mr. Ryffel left).

Meeting commenced at 11:55 AM and Ms. Kay stated that the HAC met on March 22 and they discussed the presentation program. The next one will be the Smith Cottage,

probably in June. Mr. Zuba commented about the process for the historic recognition and has developed an outline for creating a local preservation award for landowners on the beach. He will circulate the document for the members to review at the next meeting.

Motion: Mr. Kakatsch moved to adjourn as HPB and reconvene as the LPA.

Seconded by Ms. Shamp;

Vote: Motion passed 5-0.

VI. ADJOURN AS HPB AND RECONVENE AS THE LPA

Meeting was reconvened at 12:00 AM, with the same members still present.

VII. LPA MEMBER ITEMS AND REPORTS

Ms. Shamp thanked everyone for condolences on the passing of her father. She also commended Keith Laakkonen for the recent article in the local newspaper.

Ms. Kay asked about the Connecticut Ave. parking lot item not being on the agenda. Mr. Fluegel said he will advise when it is to come up. She also asked about the Holiday Inn sign and why there is another law firm coming in for the library issue; Ms. Miller explained a possible conflict.

Mr. Zuba said that he drafted an opinion to some council members about taxing incrementing financing and feels this would be a good tool for Seafarer's property. He will send it to Mr. Fluegel for review.

VIII. LPA ATTORNEY ITEMS

Ms. Miller had nothing to report.

IX. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Mr. Fluegel referred to Mr. Zuba's request about the Nature Conservancy report card and said it was included in their packets. Mr. Laakkonen addressed the LPA about the subject and talked about the document. Mr. Zuba asked how the town is doing progressively and Mr. Laakkonen said "we are doing worse" and explained why that might be. Mr. Zuba also asked about any other reports that have "red flagged" water quality in Estero Bay. Mr. Laakkonen gave details about that too adding that the Town is in "the same boat" as many other communities, but the releases from Lake Okeechobee make other areas much worse. More discussion ensued about fertilizer runoff and other water quality issues.

Mr. Shane Hidle, Code Enforcement, handed out copies of the International Property Manager's Code. Mr. Fluegel wants to adopt the whole code but realizes there may be some parts that would not apply well to FMB. He asked the members to review it and give their opinions so they may consider those for possible adoption as code. Ms. Miller cautioned that Chpt. 6, Art. 1 of the current LDC, "Maintenance Code" may have some

discrepancies to be considered.

X. LPA ACTION LIST REVIEW

Resolutions to Town Council

- Special exceptions-Surf Club and Mermaid Lounge-Van Duzer/Kay
- Shipwreck-Continued at LPA request-May 10, 2011
- Sign ordinance-goes to Council on April 18; Van Duzer

Future Work Activities

- ROW Residential Connection; Van Duzer-TBD
- LDC 613-14 10-255 Storm Water-TBD
- Post-disaster reconstruction/recovery-TBD; Ms. Miller
- IPMC (code enforcement clean-up) possibly April-all LPA
- COP ordinance

XI. ADJOURNMENT

Motion: Mr. Zuba moved to adjourn.

Seconded by Ms. Kay;

Vote: Motion passes 4-0 (Mr. Kakatsch left).

Meeting adjourned at 12:32 PM.

Adopted _____ with/without changes. Motion by _____
(DATE)

Vote: _____ Signature: _____

- End of document

**MINUTES
FORT MYERS BEACH
Local Planning Agency**

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

Tuesday, May 10, 2011

I. CALL TO ORDER

Meeting was called to order at 9:02 AM by Chairperson Joanne Shamp. Other members present:

Bill Van Duzer
John Kakatsch
Hank Zuba
Rochelle Kay
Carleton Ryffel
Tom Cameron

LPA Attorney Marilyn Miller

Staff present: Community Development Director Walter Fluegel, Tina Ekblad, Planning Coordinator; Keith Laakkonen, Environmental Services Coordinator; and Town Manager Terry Stewart.

II. PLEDGE OF ALLEGIANCE and INVOCATION

Ms. Kay

III. SPECIAL COMMENT-TOWN MANAGER TERRY STEWART

The board and Mr. Stewart welcomed new member, Tom Cameron. Mr. Stewart explained that his presence at this meeting is basically to help clarify positions regarding the COP issue on the beach, since this topic has generated discussions and confusion at other levels. He said that the LPA worked hard on a resolution back in 2009 but for some reason it had never been brought forward for the Council's review at that time. Since then, he discovered it and sent it forward but the Council "rejected the premise that was within the resolution," in that that resolution dealt with the Comp Plan "and the Comp Plan essentially did not provide for it, therefore it was barred." The Council's policy decision, he said, was that it should be dealt with within the LDC. He explained that there is a "unique situation" on the island in that there are some locations where there is service of alcohol "within the confines of the property owner's property that happens to go out onto the sand where they can serve alcohol and alcohol can be consumed at those locations." He continued that there are no rules or regulations in place at this time to control how this is done by those locations or any other locations that might be in this position in the future. Now there is service of alcohol on the beach in places with the Town having no regulation over this so the "Council's vision was from a policy matter,

that this board should undertake an opportunity to provide a recommendation of frameworks” to bring to Council about how to regulate and manage the service of alcohol on the beach in an equitable fashion. Mr. Stewart continued to explain the Council’s position regarding sending this topic and said that the new Community Development, Mr. Fluegel, has been directed by Council to provide a new framework for a different course of action to revise this item.

Ms. Shamp thanked him for addressing the LPA directly about this and asked if there were any questions or comments at this time but asked that public comment be held until later in the meeting.

IV. MINUTES

A. Minutes of April 12, 2011

Motion: Ms. Kay moved to accept the minutes, as corrected with minor edits.

Seconded by Mr. Kakatsch;

Mr. Ryffel asked that his recorded comments be changed for clarity.

Vote: Motion passed 7-0.

V. PUBLIC HEARINGS

A. DCI 2011-002 ROWE RPD

LPA swore the witnesses, as well as all those present who will make public comments. Staff testified that there was public notification in local newspapers as Ms. Shamp asked members for any ex-parte communications. Mr. Van Duzer made a site visit, as did Ms. Shamp who also received an email but didn’t respond; Mr. Ryffel made a site visit and received 2 calls from citizens who wondered what this involved and he did some “historical research” talking to other property owners.

Ms. Shamp called for the applicant to present its case. Mr. Hartzall of Pavese Law Firm, spoke for the applicant, Mr. and Mrs. Chris Rowe of 324 Estero Blvd., property owners. He gave a brief background of the case and the reasons why they are requesting a rezoning of the property from Residential Multi-family to Residential Planned Development. He stated that they were told by their realtor at the time they purchased the property that they could legally have up to 4 units there and, based on their needs at the time, that was reasonable. They have a disabled son who in their care and they wanted to build him a separate quarters close to family, even though he is fairly well functioning, to give him some independence. They met with Dr. Shockey who advised them they could not use the property as a 4 unit, but he researched and learned that the property had been used as a triplex in the past and could be eligible for 3 units under the Pre-disaster Build-back regulations if the applicant would apply for this planned development process. He stated that the applicant is aware that this is a cumbersome process but it allows for flexibility by the Town in placing certain restrictions and regulations on any approvals.

The applicant testified that the existing building is a 2 story, stilt building built in 1963 with additions from 1970, and not structurally stable. The Pre-disaster Build-

back regulations allow for structures like this to be essentially rebuilt before a disaster can cause it to be totally demolished. Mr. Hartzall asked that Alexis Crespo, Planner, Bill Glass, Architect and Strickland Smith, Engineer, be recognized in the record as experts in their fields but Ms. Miller opined that this is not required in this quasi-judicial hearing. Ms. Shamp appreciated the statement of their credentials for the record:

Alexis Crespo, certified Planner, with a Bachelor's degree in Urban and Regional Planning, is a lead AP (Accredited Professional) and is President of the local chapter of the Caloosa Planning and Zoning Assoc. and has been recognized as an expert in planning and zoning in local counties.

Mr. Smith is a registered professional engineer in the state in matters of civil engineering and drainage matters. Mr. Glass is an architect G2 Architecture, an AIA, and an expert in architecture.

Ms. Crespo testified with a Power Point presentation. She gave an overview of the topics she would discuss as they related to the codes, Comp Plan, LDC, etc. The request is to rezone the 6500 sf property to allow for a residential planned development to provide for a 3 unit parcel. She said that the property is actually 19,000 sf with about 12,300 of it seaward of the coastal control line and the remaining area is the 6500. The existing structure is built to 11.3' which is "way below" the current FEMA standards, and this structure has been approved as a triplex use. To the north are single housing units of Pink Shell, commercial planned development; to the south is zoned as beach, environmentally critical; the east has mixed residential use, with a condominium resort; west is CPD zoning with mixed residential future land use and currently has an 8 story complex. Additional photos showed surrounding properties further out in that area and Ms. Crespo gave details about these, commenting that the subject property is the only one still standing that is outdated and single story. She also showed all of the different zoning districts in this area. Ms. Crespo continued that approval of this application would allow for the new construction to be up to current FEMA standards, address general safety issues and improve aesthetics overall. The applicant is requesting the use as a triplex with standard accessories, such as pool and fencing, and parking will be under the building with a maximum number of spaces in accordance with the LDC.

Ms. Crespo stated that the Master Concept Plan (in packets) is proposed with 2 deviations: the first from table 34-3 of the LDC and applies to maximum heights in the zoning district, 30 ft. and 3 stories but the applicant is requesting 35 ft and 4 stories, due to current compliance requirements and compatibility in the neighborhood. She said that staff has agreed with this deviation; the second is from 34-3237 of the Pre-disaster Build-back provisions involving square footage (she passed out a floor plan). The plans provide for 3000 sf per unit and show an increase of the pre-existing structure. She stated that staff has found that this will not negatively impact surrounding area or the health, safety or welfare of the Town.

The presentation continued to show more views of the property and the proposed changes as they impact the neighborhood. Staff has included a waiver from TIS because there is such minimal impact from this request. Ms. Crespo discussed the impact of the proposed change on Chapter 34 and said that this application meets all of the setback requirements, special requirements of the zone and is consistent with Ch 34. There will be no impact to the natural resources on the beach and the environmentally critical area will remain the same. Ms. Crespo referred to Comp Plan compliance 4B2 and said that the application is consistent with those provisions as well as 4B8 (Recreation Land Use). Policy 4B1, Pre-disaster Build-back, looks at density of the property, allowing the property to be restored back to that density, and RPD zoning; this application is in compliance with this policy. Policy 4E2, coastal setbacks, does not apply since there is no construction proposed to impact this area. Ms. Crespo ended by opining that the proposal and application are in compliance with the Town of FMB Comp Plan and said that the staff report supports approval of the application, with 6 conditions, and the applicant is in agreement with those conditions.

Ms. Shamp opened the floor for LPA questions. Ms. Kay asked about the height of the building and the fact that applicant is stating that there is no impact on the neighborhood when she said there has been concern by neighbors. Mr. Hartzall said that this is because some of the neighbors would like to see a short structure remain there but what is being proposed is within their rights as to what is allowed.

Mr. Kakatsch asked if the building will actually be 52 ft. high and the applicant agreed, adding that FMB measures from the base flood line (Ms. Shamp verified this in the code).

Ms. Shamp asked if the 35 ft. includes the cupola. They were not readily able to give the additional square footage of this. She also asked if there was a possibility to move the structure landward to prevent changing the view; this is not possible without encroachment.

Mr. Zuba asked about the total sf of the previous triplex that was on the site and he was not pleased with receiving a new floor plan at this late time. He said this is a substantial increase in the sf and the applicant agreed that it must be due to the FEMA standards, etc. Mr. Zuba asked about the designation of 3 of the "multi-family units" to be used as short-term rentals. The applicant would like to reserve that option but Mr. Zuba said this would make it a commercial use. He also requests that staff give a report on the current condition of the building and how it is considered unsafe. The applicant clarified this by saying that they are not suggesting that the building is unsafe in that it should be condemned but rather that it does not meet current codes for structures in the flood zones. Ms. Crespo interjected that, if the LPA objected, the applicant would consider removing their rental request from the application.

Ms. Shamp asked for the staff testimony and noted for the record that Mr. Stewart left the meeting. Ms. Chapman addressed the meeting on behalf of staff of FMB. She

read 2 letters that were received this morning from time-share residents of the adjoining property (see attached). One was from a weekly owner of Beach Club 1, unit 393, and it stated that the owners object to the rezoning. The other letter was from a weekly owner of Beach Club 1, #326, who also objected due to the impact the proposed building would have on their view and sunsets. She testified that the applicants did a thorough job in their presentation and their application. She said the property is within a V zone and the base flood elevation there is 17 ft. In general, staff agrees with the applicant's proposal and she addressed each segment.

Ms. Chapman referred to the first deviation, dealing with height from 30 ft, 3 stories to 35 ft, 4 stories, and said that the LDC dictates that height is measured from base flood elevation level, without roof structure measured in. She stated that the second deviation deals with the interior square footage and the applicant will amend their requested sf down closer to 9000 sf. Policy 4D1 was used to address this and it is consistent. Staff recommends the rezoning with the following conditions:

1-proposed buildings and all amenities must comply with the FEMA regulations at the time of the development order; 2-reiterate that the cupola remains uninhabitable space; 3-a commercial grade sprinkler and alarm system is included in the plans and installed at construction; 4-applicants must meet all environmental requirements of the LDC, including but not limited to dune vegetation and sea turtle lighting, etc.; 5-at the time of development order, the applicant must address all storm water issues and use best storm water practices to address any issues that remain on site; 6-applicant will provide any FL DEP approvals and permits, along with their development plans, at the time of their development order.

Ms. Shamp asked for LPA questions directed at staff. Mr. Kakatsch asked how many elevators were planned and the applicant answered that there is only one.

Mr. Van Duzer stated that Policy 4E1 says "up to the original square footage" but that is not what the applicant is proposing. Ms. Chapman replied that the Pre-Disaster plan allows for deviation, as does the Planned Development process to give flexibility in permitting. Mr. Fluegel added that under the policy it also states "existing lawful density and intensity." He said that 4C2 is the only place where the word "intensity" is used in relationship to commercial, so this is an area of "policy interpretation." He said that staff felt that there is enough latitude therein to address the sf or "intensity" issue.

Ms. Shamp asked what the maximum sf for the lot size normally, without a pre-existing structure. Ms. Miller referred to Table 34-3 wherein it talks about RM but it is confusing and she opined that an argument could be made to build to the setbacks and the maximum height.

Mr. Cameron asked if the rental units would then qualify this as a commercial use. Ms. Miller stated that that area is exempted.

Mr. Zuba said that this "troubles" him because it is a major increase in "density and intensity." Mr. Fluegel attempted to clarify that "density" in this instance refers to the number of units and not the sf, which is "intensity."

Mr. Fluegel said that this comes down to the intent of pre-disaster policies because property owners who want to make improvements, run into these problems of the "50% rule," which dictates that "once the value of the improvement exceeds 50% of the depreciated value of the existing improvements," the entire structure must be rebuilt in compliance with current FEMA standards, which are arduous and costly. He said that the basic intent of the policy is to create the economic incentive whereby an owner would want to build back and elevate. Mr. Zuba commented that he understands the intent of the Pre-Disaster build-back is to elevate and get a better unit; however, he questions whether "buying 6 ft. of elevation and the incentive for that is giving 10,000 sf of residential area" is a fair trade. He worries that this is a "very troublesome precedent." Ms. Chapman pointed out that it is important to look at the context of each case; for example this property is located between 2 very tall, denser usage structures.

Short recess at 10:42 AM; reconvened at 10:59 AM.

Ms. Shamp opened public comment.

John Boucher, from Estero Island Beach Villas addressed the meeting, adding that his property is not a "time-share," as referred to by the applicant, and said there are 42 units with 42 owners. This property shares a property line with the subject property. He gave a brief history of the property, which is now owned by the applicant, and said that there have been many complaints since they took over from the residents at the Villas, including having police respond to remove their renters from the Boucher's pool. He said that this new proposal will make the already nuisance property "compounded by 3 times," with the addition of units to rent. He said that the family dwelling approach is fine but the application says possible rental units, and even though the applicant says he's willing to withdraw that, Mr. Boucher has no confidence in that promise because there is no way now to enforce the short term rental issue. He said that this proposal will go from 1680 sf interior cottage to 13,650 sf, adding that the public hasn't been given the edited floor plan which just appeared today, and feels this is a huge deviation. Mr. Boucher said that the other deviation talks about the allowance from 30 ft. to 35 ft. and said that the "35 ft." is really 60 ft. because there is 17 ft. FEMA regulated finished floor plus 35 ft. to the soffit and a peak that is about 8 ft., taking it up to 60 ft., making this a building about 38 ft. wide by over 60 ft. tall. He continued and pointed out that the application says that this proposed height "will not impact existing views of the Gulf of Mexico from adjacent properties;" he said that this is not so. He asked that the LPA consider the size, the negative impact on the adjacent properties, the "very unreasonable deviation requests" and the misleading statements in the application, and urged the LPA to recommend that this be denied.

Ms. Lucinda Keller addressed the meeting and said she has lived here for many years and seen this "Déjà vu" before and said it seems like the focus of the Town is on the NW area of the island and feels there is too much influence in some areas. She feels that there is too much favoritism for certain people and that granting this proposal is unfair.

Mr. Larry Crossman of 250 Estero Blvd., the Estero Island Beach Villas, and said that since the current owners have taken over the subject property, there have been constant problems with renters there disturbing the neighborhood with their disregard of the other properties. He said there are spring-breakers climbing over fences into neighbor's pools, trashing properties, partying and having police respond to quiet them down and does not want to see this "times 3" with the addition of units. He added that it will also obstruct their view and said that there was never a problem with the previous owners for all the years they were there. He is opposed to the application.

Mr. Jim Schuster was sworn in and addressed the meeting. He said he has owned his unit at Beach Club 1 about 23 yrs. and he wanted to voice his concerns and represents several of the other owners there. These owners feel that their view will be constructed and they wanted to be on record that they object.

Ms. Shamp closed public comment and invited the applicant to present further testimony but he asked for Mr. Ryffel's comments first.

Mr. Ryffel said that he used his background as a planner to research this so he could bring a different view to the board. He agreed that the applicant and staff reports are very similar so he referred to the staff report where he made his notations for comment. Mr. Ryffel pointed out the reference to a "single-family residential" on the first page because as it applies to 4E1 in the Comp Plan, this is an important factor. On pg 3, it discusses "historically documented units" and he said he has "real doubts about that" because a triplex is 3 dwelling units attached that each have a kitchen, a bath and a door. He said that he doesn't see this on any of the cards provided and he feels that there is not sufficient evidence that this was ever a true triplex. On the same pg., the Pre-Disaster Build-back is described and Mr. Ryffel referred to 4E1 here which he said says that you can replace the same use, which is single family here, up to the original sf, which is 1680sf and not 13650sf. He added that if this gets approved he would like to see how staff comes up with justification of that kind of increase; he added that 4E1 specifies these things and he opined that changing it would need a Comp Plan amendment to change that wording. Therefore he feels that this zoning case is "premature."

Mr. Ryffel continued to point out areas of concern, such as pg. 4 where it reads "additionally the proposed density of 3 units is a historically documented number," and again said that this has not been adequately proven. He said that the Pre-Disaster plan "looks at what is there and not what used to be" which, in this case, is a single-family home, so he feels that is what the applicant is entitled to. Additionally, LDC

sec. 34-3237 dealing with describing a unit, partially states "*a rebuilt residential building may exceed the density limits on vacant land, but cannot exceed the legally documented number of dwelling units in the building immediately before the natural disaster.*" In this case, he continued, there is 1 unit in that building. Moving on to pg. 5, he referred to the paragraph which states "the residential uses and the historically documented 3 units do not exceed the general densities and intensities set forth in both the Comp Plan and the LDC." However, he said that the acreage of the property now is 1.5, with 6500sf, and with 1 unit the density is 6.66; making this 3 units, the density will be about 20 units per acre so he feels that this usage will exceed the densities and intensities. He added that the general density in this area is 6 units per acre, the maximum. Mr. Ryffel discussed the Pink Shell and the position it was in a few years ago when they had 2 buildings and wanted to rebuild using the Pre-Disaster plan but add sf to it so they had to transfer some of the uses to their parcel across the street to be able to enlarge it; had they not been able to do so, they would only have been allowed the same sf that was already there. He said that the applicant is asking for a 900% increase in sf and feels that this is not reasonable and approval of this would be a "dangerous move."

Ms. Shamp again gave the applicant an opportunity to speak. Mr. Hartzall said that the applicant still feels they meet the requirements of the staff report and all the LDC and Comp Plan points. He said one of the key components for rezoning in both codes relates to any changed conditions that warrant the rezoning. He said that looking at an existing building and deciding that rebuilding will be limited to what is there now is not economically feasible. He added that approval of this would guarantee that the new structure will be built to current standards allowing for a safer structure. He addressed a point made by Mr. Ryffel regarding "3 doors" and asked Ms. Crespo to again show slides that address the doors. He said he cannot explain how the structure got from the original triples to the current use. Mr. Ryffel interrupted to ask if there are the "required" 3 kitchens and baths and Mr. Hartzall said there are not but referred to the LDC Sec. 34-632 5c wherein it describes "lock-off units" being treated as density units or dwellings for the owner to rent them out, with or without kitchens.

Mr. Hartzall again referenced Comp Plan 4E1 in the staff report on pg. 3 wherein density (dwelling units) and intensity (square footage) up to the original sf and said it is a restriction on commercial square footage and not on residential sf. Furthermore, he pointed out the last sentence which states "*the Town Council may approve additional enclosed sf only if an existing building is being elevated on property that allows commercial uses.*" However, he continued that the LDC does have a restriction, which states that "the replacement building cannot exceed the density and intensity of the existing building as measured for residential buildings" and then points to the Post-Disaster section which restricts increasing the size from what was originally there. This is the reason, he explained, why the applicant is going through this process, to deal with this from a LDC basis. He insisted that applicants would not go through this difficult process for something this small normally. In addition, he reminded the members that with or without this approval, the applicant can put up a building even taller than what they are asking for, according to the new FEMA

standards, which would impact views more than this plan. Mr. Hartzall commented that he still questions the 1.2 floor area ratio and wonders if it applies to residential development and, if so, he would request that the LPA recommend a deviation to that requirement (in Table 34-3) to make it consistent with the 9000sf limitation for deviation #2. Ms. Shamp asked for clarification, as did other members, stating that they were confused. There was discussion of the dimension table, which gives an area ratio of 1.2 for RM and Ms. Miller agreed it is not clear. Mr. Fluegel commented that there are commercial uses allowed for RM zoning districts. Then, he added, going back to the Comp Plan to Policy 4C2, it is the only policy that refers to intensity, thus the purpose for having deviations.

Mr. Hartzall commented on condition 3, regarding the alarm and sprinkler system, and said he believes it relates to NFPA 13, but would like staff to clarify that.

Ms. Miller commented that the definition in the LDC for dwellings, they are not required to have kitchens but must have contained sleeping and sanitary facilities. She said the Pre-Disaster plan and said that its reference to "density and intensity" refers you back to the post-disaster build-back 34-3238, which states that a "rebuilt residential building may exceed the density when it is for new buildings on vacant land, but cannot exceed the legally documented number of dwelling units in the building immediately before the natural disaster." She added that it is up to the LPA to determine what is sufficient documentation to verify that.

Mr. Hartzall requested that the applicant's request for the rental units be withdrawn since it seems to be the biggest problem and, if it is removed, it should eliminate the need for condition 3. Mr. Fluegel asked if the applicant would go as far as to agree to a prohibition of short-term rentals. Mr. Hartzall agreed that by withdrawing this request, the applicant recognizes it would be a prohibited use but Mr. Fluegel insisted that it be specifically stated and the applicants agreed.

Mr. Kakatsch asked if they would consider withdrawing the height requirement of 35 ft. and keep the 30 ft. situation. Mr. Hartzall denied this request but said they might acknowledge this as a recommendation by the LPA.

LPA discussion: Mr. Ryffel asked Mr. Van Duzer about the hazard mitigation section, since he helped draft it, and asked if Policy 4E1 applies only to commercial. Mr. Van Duzer stated that his recollection is that it included residential structures. He said that everything on the beach side of Estero Blvd. is exempt from short-term rental restrictions anyway. Mr. Van Duzer said he would make a motion to deny this application until they have had an opportunity to consider all of the items in the Comp Plan and LDC and change them to bring them up to date and make them clear and consistent. He said that these codes need to be carefully revised to protect the residents and be sure they are all doing things according to the latest standards.

Ms. Shamp stated that they still need discussion before a motion but asked if there could be a show of hands as to a consensus about this. She asked if there was an

opposing view or if they are all in agreement. Mr. Kakatsch said that they need to facilitate people like the Rows but still try to keep the deviations to a minimum, thereby trying to live by the rules. He said that if they do not work with the applicant to make this happen, things will get worse and the property may be constantly rented to college kids and partiers. Mr. Kakatsch moved that the LPA go forward with this plan and upgrade the beach.

Ms. Kay favors bringing the whole plan down to 2 floors rather than 3 floors but she agrees with Mr. Kakatsch's comments about things getting worse.

Motion: Mr. Van Duzer moved that the LPA deny the Resolution 11-005 for the ROWE RPD.

Seconded by Mr. Ryffel;

Discussion: Mr. Ryffel agrees that they should work with the applicant but feels that if they vote for this, they are essentially throwing out the standards in the LDC and the Comp Plan.

Mr. Van Duzer again stated that he feels the Comp Plan needs to be edited and updated, not rewritten.

Mr. Kakatsch said that they should stay within as few exceptions as possible and allow the applicant to proceed.

Ms. Shamp said that her job is to make decisions based on the LDC and the Comp Plan, and not from personal opinions, even though she likes to see people who invest in the beach by attempting to do things to make it better. She said that they need to look better at Policy 4E1, which is Pre-disaster Build-back, and feels it is clear as to the sf, etc. requirements. In the Policy 4C34, which relates to the opportunity to apply for variances regarding height, it talks about the Town having the option to modify, approve or deny these requests and goes on to include that "particular attention would be paid to any permanent view quarters to the Gulf waters that could be provided in exchange for allowing a building to be taller than 2 stories." Ms. Shamp continued to refer to the various Policies and regulations and said they are very clear in that basically you can rebuild to what size existed before but not to gain a bigger structure.

Restated Motion: Mr. Van Duzer moved that the LPA deny the Resolution 11-005 for the ROWE RPD.

Seconded by Mr. Ryffel;

Vote: Motion passed 6-1, with Mr. Kakatsch casting the "nay" vote.

Ms. Shamp closed the hearing at 12:21 PM. There was a short break.
Reconvened at 12:30PM.

B. Mermaid Special Exception Hearing – FMBSEZ 2010-0003

Ms. Miller swore in the witnesses and staff confirmed the Notice of Public Hearing advertisement. Ms. Shamp polled members for ex-parte communications. Mr. Kakatsch had a site visit; Mr. Van Duzer knows the applicant; Ms. Shamp had a site visit, but there were no other communications.

Ms. Chapman presented the staff report regarding this request and said this was before the LPA in January but there has been a small amendment to the original request. The request is for a special exception in the downtown area to serve alcoholic beverages in an outdoor seating area at 1204 Estero Blvd. (she referred to a visual aid) in the form of a tiki hut in the rear and a small area in the front patio. She stated that staff recommends approval with the following conditions:

1-the subject property for outdoor consumption is combined with in the tiki hut and the front patio shown in the diagram and the applicant has proposed that a hedge will define the area in the front for consumption; 2-sales and service of alcohol will not begin earlier than 9:00Am and will not be any later than 2:00 AM; 3-audible entertainment is prohibited before 11:00AM and after 10:00 Pm Sunday through Thursday, and 11:00 AM and 11:00 PM on Friday and Saturdays, and will at all times be comply with the Town ordinances.

Ms. Chapman said that there was one letter received by the Town, from George Gannon, about this and Merlo's property, which she read for the record (see attached). The letter was to express Mr. Gannon's concern about a "night noise factor" which he feels will be created by allowing these COPS and said that there is a lack of enforcement on the part of the Town and law enforcement to control the "ongoing party atmosphere" that is happening on the beach, damaging the reputation of FMB as a destination for families. Mr. Gannon strongly objects to approval of these exceptions.

Scott Van Sullo, owner of the Mermaid Lounge and Liquors, addressed the meeting and pointed out there is outdoor seating across from his property at the Beach Doggy-Dog and next to him at a small restaurant.

LPA questions for the applicant: Ms. Kay asked if the outside rear plans have changed and the applicant said it has not, as he explained the slight change in the front part. He said his business will not allow any nuisance behavior like the Lani Kai does.

Mr. Ryffel asked for an explanation of where the deck is located and what it looks like. The applicant explained why the deck is there and that there is a plan for hedges.

Mr. Zuba asked how many seats exist and how many would be added by this approval. The applicant said it was calculated by sf rather than capacity. Ms. Chapman said they used the formula of 1 per 75sf for outdoor seating and referred to her diagrams, saying that they do meet the parking requirements. Mr. Zuba also asked if there will be some landscaping there and it was confirmed that there will be some added.

Ms. Shamp opened the floor for public comment. Ms. Lucinda Keller said that "in season, that area is a bottleneck" and said this "variance" should not be granted.

Mr. Lee Melsick and said that the applicant and his family have been here for years and should be trusted to do what they propose. He said that there is no reason to think there will be trouble or any problems with this business as these are good supporters of the community and they keep their word. He fully supports the approval of this request and feels that the improvements planned will "spruce up" that part of the boulevard.

Ms. Shamp closed public comment and the testimony portion of the hearing and asked for LPA discussion. Mr. Ryffel supports the application but would like to change the third condition regarding the music in front of the business. He pointed out that the applicant didn't request it and he feels it should be taken out. The applicant commented that they have no intention of having any entertainment in front, except in the case of a special occasion, and then he would apply for a permit. Ms. Miller said it could just be edited to show the change.

Motion: Mr. Zuba moved to approve the application, as edited.

Seconded by Mr. Zuba;

Vote: Motion passed 7-0.

The hearing was closed at 12:54.

C. Merlo's Special Exception-FMBSEZ2010-0006

Ms. Miller swore in the witnesses and staff confirmed the Notice of Public Hearing advertisement. Ms. Shamp polled members for ex-parte communications. Ms. Shamp and Mr. Ryffel had site visits only.

Staff testimony: Ms. Chapman testified that this is for a special exception in the downtown area to serve alcoholic beverages in an outdoor seating area (she referred to diagrams) in the downtown zoning district. Presently, the business serves food on the deck area but is not permitted to serve alcohol. She stated the business had been granted interior consumption on the premises with a stipulation that should they request outdoor alcohol service, they would need to provide additional parking for the increased sf. She state that this would be an additional 3 spaces and said that the owner also owns a parking lot adjacent to the business and Mr. Primo will supply the additional spaces.

Staff recommends approval of this special exception, with the following conditions: *1-the area for outdoor consumption be confined entirely on the 470sf deck; 2-signage will be posted to designate the extra parking spaces; 3-sales and service of alcohol will not begin earlier than 7:00Am and will not be any later than 12:00 midnight; audible entertainment is prohibited before 11:00AM and after 9:00 Pm 7 days a week, and will at all times be comply with the Town ordinances.*

Ms. Chapman read a letter received by the Town from Mr. George Gannon, owner of the Beacon Motel, in which he objects to the approval due to the noise nuisance it will create, adding that he has "lost guests from time to time because of these late into

the evening partying heightened by the drinking of alcoholic beverages..." (see letter).

Ms. Kay asked about a part of condition 1 (pg. 4 of 7) and Ms. Chapman stated it is just a technical phase used in the Comp Plan and there was an explanation by Ms. Miller.

Mr. Zuba asked about any landscaping requirements but Ms. Chapman stated the Town has not made that a condition because it is an elevated structure but would certain include this if suggested by the LPA.

Ms. Shamp asked about the hours of operation of the parking lot since the extra parking will be provided by that lot. Mr. ??? answered for the applicant and stated that there are no problems with that lot closing and there are signs on the spaces designating them for Merlo's.

Mr. Ryffel asked if there is an easement or some type of written agreement for the applicant to use those spaces, especially in the event that the parking lot transfers ownership. Ms. Chapman stated that there was not because "Norm" owns both properties. Ms. Miller opined that language could be added to the resolution to provide this and thereby guarantee the use of the spaces.

Public comment was opened:

Ms. Lucinda Keller objected to the approval of this exception, stating that "if that right-of-way between Primo's parking lot and that house is closed for coastal, fire whatever is needed in that area, I will take it to the state because I have a title to the property across the street..." and said "it will not happen!"

Mr. Lee Melsek addressed the meeting and he said this is yet another request for alcohol to be served "at the front doors of single-family homes" and outdoor entertainment also "at the front door of people's homes." He continued that "calling the cops isn't always getting it done for these people." He objects to the granting of these exceptions more and more because they violate the rights of the neighbors by playing their music loud and at night. Mr. Melsek pleaded with the board to "at some point address that issue," suggesting that they begin doing that by denying this exception.

Mr. John Albion, President of the FMB Chamber of Commerce, stated that there are rules in place for all businesses and residents and he feels that this particular issue not be dealt with on a case-by-case basis. He said that this is a good business, the owners are "good people," and he feels the Town should work with them when they are willing to "play by the rules." He added that this is "critical for the future of FMB that there is a balance between commercial, restaurants, retail and taking care of the residents nearby."

Public comment was closed and Ms. Shamp invited LPA discussion. Mr. Ryffel pointed out that the applicant did not request music so he opined that they limit this, adding that "they didn't ask for it and I'm not gonna approve it." He feels that there is no intent on the part of the applicant to have any music so he suggests taking that part out of the language.

Ms. Kay asked if currently are permitted to serve beer and wine and Ms. Chapman advised that they have a 2 COP license.

Motion: Mr. Ryffel moved to approve the application with the recommended conditions: Condition 3 is to read "music and audible entertainment are prohibited; signage must be installed at Norm's parking lot indicating which spaces are reserved exclusively for the subject property and owner shall obtain and record a parking easement for those spaces. The requested special exception is consistent, etc.; the requested special exception, as conditioned, exceeds all performance standards; the requested special exception, as conditioned will protect, conserve, etc.; the requested special exception, as conditioned will be compatible with the existing and planned uses and will not cause damage, nuisance or other detriment to persons or property; the requested special exception, as conditioned will be in compliance with general zoning provisions, etc.;

Seconded by Mr. Zuba;

Vote: Motion passed 7-0.

Hearing closed at 1:21 PM and there was a recess for lunch.
Reconvened at

(TRANSCRIBER'S NOTE: Recording was not started upon the reconvening of the meeting and started somewhere after adjourning as the LPA and beginning as the HPB, as conversation below reflects).

VI. ADJOURN AS LPA AND RECONVENE AS THE HPB

Motion: Mr. Van Duzer moved to adjourn as LPA and Reconvene as HPB.

Seconded by Mr. Zuba;

Vote: Motion passed 6-0 (Mr. Ryffel left).

Ms. Kay was talking about the Smith Cottage being historic and therefore not required to be raised to FEMA standards. The meeting will be June 23, 2011 at 11:30 AM for this.

Ms. Kay said that Mr. Zuba had suggested using a standard form of recognition of historic properties on the beach but Ms. Ekblad felt that it wouldn't really go anywhere. Ms. Ekblad clarified that there are the 3 different boards, the HPB, the HAC and the Estero Island Historic Society, and they need to work together to address these projects to eliminate duplication of efforts and resources.

Motion: Ms. Shamp moved to adjourn as LPA and Reconvene as HPB.

Seconded by Mr. Kakatsch;

Vote: Motion passed 7-0

VII. ADJOURN AS HPB AND RECONVENE AS THE LPA

Meeting was reconvened at 1:51 PM, with the same members still present.

VIII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

A. COP Policy Discussion

Mr. Fluegel referred to a memo given to members, with attachments, and gave a brief history of the development of this discussion. He stated that he was given the task of reviewing the Town's policy, Comp Plan and LDC influence regarding the subject and he didn't interpret the Comp Plan to prohibit alcohol on the beach. Later, Council rejected the LPA's interpretation, which was based on a consultant's report, and directed staff to prepare another approach to regulate this. In this memo, pg. 2 shows the different approaches he suggested and Council decided to use a more "administrative" approach, which was presented in a draft form at the last meeting.

Mr. Fluegel continued that there really is no current regulatory scheme for dealing with COP on the beach, there is no zoning control. He said what the Town does have is Chapter 4 in the Code of Ordinances, the "open container" law but it gives no authority to local enforcement officers to enforce it so these are reliant on the sheriff. He said that this lack of regulation and zoning enforcement has created a problem with the existing businesses that seem to be "grandfathered in" and they have no rules to be held to. Mr. Fluegel pointed out that the Town has already allowed commercial service-oriented uses in the EC zoning district, like Jet Ski, chair and parasail rentals.

Mr. Fluegel said that they came up with an administrative process, adding that there are currently 15 establishments presently that have liquor licenses and he feels that these can easily be dealt with in an administrative manner. New ones coming in can be handled differently, as special exceptions but he focused on the existing 15 and questioned how they should deal with resorts as opposed to the restaurants and in consideration of the location of each business. The proposal is to deal with them "as a whole" with a consistent set of rules but still asked for the LPA's recommendations and guidance.

Ms. Shamp thanked him for his patience and attention in responding to the LPA, especially after the last meeting, and was appreciative of his efforts to slow this down and help make the process more comprehensive.

Ms. Shamp asked for public comment:

Mr. Pat Sinono, owner of Nemo's On the Beach. He said what they need is "a fair playing field" for all businesses and agrees that there should be a fair standard.

Mr. Frank Schilling of 6672 Estero Blvd. congratulated the LPA for "opposing the spread of alcohol across the beach." He said that in this case he does not side with the businessman, which he usually does, and opposes COP on the beach. He feels that the Council should deal with the major issues facing them rather than spending so much time and energy for on the handful of people who want to continue to expand the alcohol service on the beach.

Mr. Tom Babcock addressed the meeting and reminded that he has already supported the LPA's resolution banning the expansion of alcohol on the beach. He feels that their interpretation of the Comp Plan was appropriate and allowed them to make the appropriate decision based on it. He said that most people's opinion of the area is that it is a family beach and there are many places for adults to go and drink, if they choose to do so, without having to add more places. He pointed out that even Miami Beach has decided to move forward with a ban on sale and consumption of alcohol on the beach due to litter and rowdy people due to it. He added that the right place to deal with this is in the LDC where uses and regulations are defined and supports making changes in the LDC. He suggested that, should they make changes in the LDC, the 3 "grandfathered" businesses be given specific time periods to come into current compliance, adding that this is a zoning rather than property rights issue.

Mr. Bob Young addressed the meeting and commended the LPA for its past decisions on this issue. He also feels that this is a difficult issue but does not support expanding alcohol services throughout the beach as the code allows now.

Ms. Shamp asked for LPA discussion:

Mr. Fluegel commented first about a "separation of issues." He said that there are a few issues to consider here, including the "open container" law which applies to anyone drinking on the beach. He said that that even the term "public beach" is not clear as it relates to private property and these regulations. Mr. Fluegel opined that his approach would address the 3 "grandfathered," adding that it doesn't mean they are "grandfathered for compliance with any future zoning requirements that go to health, safety and welfare issues. He also suggested a geographical limitation to keep certain regulations in specific areas and/or a conditional use permit, needing an annual performance evaluation with revocation measures.

Mr. Van Duzer referred to the 3 "grandfathered" businesses and asked if they owned out to the high-water line. Mr. Fluegel said he could not find anything to support that these people own to that line but Mr. Van Duzer said had come to the Town because they couldn't serve alcohol on the beach according to the LDC and showed papers to support that they own to the high-water line. Due to that, the Council granted them the exception to serve alcohol there. Mr. Fluegel said it still crossed a zoning line and went into a different zoning district then. Ms. Miller agreed that, if this is true, anyone else who owns to that line, should have the same rights. Discussion ensued about the zoning lines and property owner rights to the high-water line.

Mr. Zuba asked how EC zones are defined and Mr. Fluegel replied that is coterminous with the 1978 Coastal Construction Control Line and pointed out that this is also coterminous with the Recreation Future Land Use Line. Mr. Zuba said that they do have the opportunity then to be able to regulate what goes on in that zoning district and referred to a memo by Jerry Murphy wherein he noted that if they found it to be an intrusion, they would have the ability to regulate COP in that district. Mr. Zuba feels that this is an intrusion and wondered why the open container law isn't of use in regulation. Ms. Miller replied that it applies to public and not private property.

Mr. Ryffel commented on a handout he had that was distributed by MRTF and read a sentence "all waterfront property on the island is privately owned; public use is permitted from the water to 10 ft. landward of the high tide line; 25 beach accesses and 3 public parks...provides legal access to the beaches." It goes on to discuss open containers and alcohol consumption "the drinking establishments along FMB have specific boundaries within which you may consume or in your possession open containers of alcoholic beverages...it is unlawful to consume or have in your possession an open container alcoholic beverage on a semi-public or public street, sidewalk, parkway, beach or parking lot located in the Town of FMB." Some discussion ensued about the differences between private and public beach areas.

Mr. Fluegel interjected that there is a requirement in the code that if the applicant property is within the 500 ft of a public park, he must apply for special exception for COP. He pointed out that the mean high-water line is public park line.

Ms. Shamp said that the fact that there is nothing in the code to enforce consumption means to her that COP on the beach was not an allowable use in the Comp Plan; therefore, when the LDC was written, they didn't regulate it because it wasn't allowed. Ms. Shamp said that she has reviewed this issue in the LDC and prepared a document with her views, which she passed out, and said that her research into the Comp Plan and the LDC has made her understand that this is not allowed in the LDC either. She referred attention to her second paragraph "in reviewing the LDC references are found to indicate that the proposed COP expansion is prohibited. LDC Sec 14-3A15 states that 'it is unlawful or prohibited for any person to do, conduct or permit any commercial activities on the beach or dunes not explicitly authorized by this code or other Town ordinances' and I do not see that COP on the beach is explicitly authorized. There exists no explicit authorization of the COP in the Comp Plan..." (see report). She continued that the LDC's strongest prohibition to the newest COP expansion is LDC sec 34-1574B wherein it states that "except in instances of overriding public interest, new roads, private land development or expansion of existing facilities within wetlands or sandy beaches that are designated in the recreation category in the FMB Comp Plan, shall be prohibited." LDC sec 34-652A designates the purpose of the EC zone is to designate that the preservation of the beach is critical to the Town and restricts its uses and Sec 34-652B says that the application is intended to prevent a public harm by precluding the use of land for purposes that adversely affect a defined public interest. Additionally, she points out that Sec 34-609 states that where there are conflicts between the LDC and the Comp

Plan regarding development and zoning districts, the Comp Plan will prevail. Sec. 34-652D states that "no land use in the EC zone shall be permitted by right, except those permitted by the FMB Comp Plan." Ms. Shamp continued to read several paragraphs in her report which referred to specific sections of the LDC and the Comp Plan dealing with COP, restricted zones and applicable stipulations dealing with this issue. In summary, she opined that this is not allowed by the LDC.

Mr. Babcock commended Ms. Shamp for her intensive research, as did the other members and thanked her for her diligence and hard work in bringing this comprehensive report to light.

Mr. Ryffel said that personally he doesn't like expanding the COP but he understands that decisions have been made by "our boss and we are advisory to them." He added that he "unalterably opposes" any administrative approvals of COP but he gave some options that he came up with. Recognizing that the existing COPs are in different places and went through different approval methods, he realizes that they need to be addressed in that light. One suggestion is "COP is permitted on the beach on any property up to within 50ft of the mean high tide with an existing COP license, and located in the Time Square area only, subject to any reasonable conditions including that alcohol must be purchased at an existing bar to be consumed on the beach; there will be no sales, wait staffed tables or carts of any kind however powered on the beach." An alternative to that would be the same without prohibiting sales of wait staff. He then discussed properties outside of Time Square, with existing COPs, not including those for whom COP was approved as part of a planned development. These properties may seek approval via special exception, "alcohol must be purchased at an existing bar to be consumed on the beach up to within 50ft of the mean high tide; there will be no sales, wait staffed tables or carts of any kind however powered on the beach." He feels that this will cover people who go into a bar, buy a drink and take it outside to sit on the adjacent beach. As far as the properties with COPs that were part of planned development, they "must request permission for consumption of the beach via an amendment to their approved planned development and "alcohol must be purchased at the existing bar and may be consumed on the beach up to 50ft of the mean high tide and there will be no sales, wait staffed tables or carts of any kind however powered on the beach."

Mr. Ryffel's last suggestion says you can buy a drink in an existing bar and consume it on the sand but there will be no sale or service on the sand. He handed out copies of the document for review. Mr. Fluegel likes the options and said they address the issues of equity. Discussion took place about wait staff and the purpose they serve.

Ms. Kay wondered how they would address the existing places and they discussed the possibility of a "sunset" condition. Mr. Fluegel suggested taking Mr. Ryffel's option #2 to Council. Ms. Shamp pointed out that there is still a problem with area of the premises and Mr. Fluegel said it would need to be run by the state, too. More discussion took place about space and area as well as parking spaces designated for these businesses.

Ms. Shamp asked how underage drinking is controlled normally if someone has a COP on a premise. Ms. Miller said it usually just is regulated by the owner to ensure that no one underage is drinking. Code Enforcement Officer Shane Hidle replied and said that many places use a bracelet identifier for underage patrons.

Mr. Fluegel asked if there was a consensus direction on Mr. Ryffel's option to allow him to explore it.

Mr. Zuba, Mr. Cameron and Mr. Ryffel like this option; Mr. Van Duzer wants to see what happens with Town Council before he decides; Mr. Kakatsch is opposed to drinking on the beach, Mr. Van Duzer agreed with this and doesn't want to see any consumption on the beach; Ms. Kay feels that the beach should not be a place to drink; Ms. Shamp remains that she does not believe the Comp Plan or LDC support expansion but she realizes that the LPA has been charged with this task and she must work to bring the LPA to a decision. She feels that they have a 2-part question: do they approve drinking on the beach or, if Council passes it anyway, what restrictions do they suggest be put in place.

Mr. Fluegel asked if they would be agreeable to fashioning an ordinance that says that, as a board they still remain opposed to any expansion of COP in the EC zoning district; however, if it is allowed by Council, they would suggest the approach to take. This way they wouldn't be giving up their right to fundamentally be opposed to the expansion but they would be saying that this is the way to do it, if it is going to be approved anyway. Ms. Miller added that the LDC can be amended at any time and Council has directed them to do that for COP on the beach.

Mr. Ryffel said that he feels that the LPA looks at and understands the LDC and Comp Plans better than the Council because they need to as an advisory to the Council. He wants Ms. Shamp's research work attached to their recommendation and sent to Council so that they may see the work that was done and all of the areas that apply to this issue.

Ms. Shamp asked what Mr. Fluegel would like at this point, since he has been directed to get this done. He said that he would like to see an LPA resolution that memorializes their thoughts and show that they are still against this but that they include a suggestion as to how to proceed if it is going to get approval anyway. He said that staff will still go back and work on certain provisions when this comes back to the LPA next time. Ms. Shamp feels that a public hearing is premature and asked what the others thought. Mr. Van Duzer asked Mr. Ryffel if he agrees with Ms. Shamp and he said he does. Mr. Van Duzer was ready to make a motion to send it back to Council and tell them that the LPA does not want anything to do with COP expansion. Mr. Zuba said that Council members need to be made aware of the liability issues in passing this. Ms. Kay wondered how this could be acceptable if the whole thing requires amending the LDC. Mr. Ryffel said that if something is to go forward, he insists that their reports and options go along with their recommendation. Mr. Cameron agrees that there should be a recommendation to Council, letting them

know that they were split on their decision to allow any alcohol whatsoever, but if they must go forward, they should consider the LPA's recommendations. Mr. Zuba said he is not so opposed to option #2 and is not sure he would say no alcohol completely but he would like to see this discussed further. There was brief discussion about the options and Ms. Shamp opined that they need to work on this a little longer but they would like some of the laws after Mr. Fluegel's meetings with state officials. Mr. Fluegel agreed and hopes that they can have a workshop before it moves on, adding that he hopes to meet with LPA members separately if agreed.

Ms. Shamp asked for further public comment and Mr. Schilling addressed the meeting, saying that he is appalled that the Town Council would even consider moving ahead with this when the Code and Comp Plans both regulate against it. He thinks that the LPA has valuable experience and obvious knowledge and it is time Council listened to what they say.

Mr. Lee Melsek said that Mr. Ryffel's compromise is not solving the problem and it does not stop the spread of alcohol on the beach. He said there is no difference if a waiter takes the drink out or the patron does it himself. He said that both Mr. Van Duzer and Kakatsch are right in standing up for the solid principles they stood on and directed them to challenge the Council, asking "otherwise, why are you guys here?" He said that it is wrong for Council to violate the LDC and go against the idea of making this a family beach. He said they are here for the community and "not to be puppets of the Council."

Ms. Babcock asked if this resolution would make the beach a better place to live or work. She said that if they must pass this that there be strict rules to protect the residents and wondered why there is such a rush to get this through. She is confused about the LPA's position as an advisory board when they are so knowledgeable yet the Council doesn't listen.

Public comment closed.

IX. LPA MEMBER ITEMS AND REPORTS

Nothing to report.

X. LPA ATTORNEY ITEMS

Ms. Miller had nothing to report.

XI. LPA ACTION LIST REVIEW

Resolutions to Town Council

- Special exceptions-Mermaid Lounge
- Merlo CPD-TBD

Future Work Activities

- ROW Residential Connection; Van Duzer-TBD
- LDC 613-14 10-255 Storm Water-TBD

- Post-disaster reconstruction/recovery-TBD; Ms. Miller
- IPMC (code enforcement clean-up) possibly June-all LPA
- COP ordinance

XII. ADJOURNMENT

Motion: Mr. Ryffel moved to adjourn.

Seconded by Mr. Cameron;

Vote: Motion passes 6-0 (Mr. Kakatsch left).

Meeting adjourned at 4:09 PM.

Adopted _____ with/without changes. Motion by _____
(DATE)

Vote: _____ Signature: _____

- End of document

MINUTES
FORT MYERS BEACH
Local Planning Agency

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

Tuesday, June 14, 2011

I. CALL TO ORDER

Meeting was called to order at 9:02 AM by Chairperson Joanne Shamp. Other members present:

Bill Van Duzer-excused
John Kakatsch
Hank Zuba-excused
Rochelle Kay
Carleton Ryffel
Tom Cameron

LPA Attorney Marilyn Miller

Staff present: Community Development Director Walter Fluegel, Tina Ekblad, Planning Coordinator.

II. PLEDGE OF ALLEGIANCE and INVOCATION

Ms. Kay

III. MINUTES

A. Minutes of May 10, 2011

Motion: Mr. Kakatsch moved to accept the minutes, as corrected with minor edits.

Seconded by Mr. Cameron;

Mr. Ryffel pointed out a few minor errors for correction; Mr. Kakatsch commended the transcriber for the quality of the minutes.

Vote: Motion passed 5-0.

Motion: Mr. Cameron moved to switch items A and B in the agenda order.

Seconded by Ms. Kay;

Vote: Motion passed 5-0.

IV. ADMINISTRATIVE AGENDA

A. Consumption on Premises Workshop Discussion

Mr. Fluegel passed out copies of the minutes from Dec. 6, 2010, which included discussion regarding this topic, along with reference documents. He reviewed some of the possible options regarding overall permissibility of COP and EC, saying that

they could consider an outright prohibition of all COP and EC or develop regulatory options for permitting these either by special exception, outright permitted use, etc.

Ms. Shamp began the discussion starting with the option of outright prohibition of all COP and EC. Ms. Kay supported this option and asked how the Bert Harris Act would affect the Lani Kai and Top o' The Mast. Ms. Miller answered that it would only affect them if the LPA passed the total prohibition, including the "grandfathered" or "non-conforming" use properties. Mr. Fluegel interjected that Beach Pub had a special exception but he has no documents to say that the Lani Kai and Top o' The Mast have any.

Mr. Ryffel asked the attorney how prescriptive rights weigh into the legal argument regarding the aforementioned properties. There was brief discussion here regarding any documentation of special exceptions or "grandfathering."

Mr. Cameron asked who granted the special exception to the Beach Pub, and why. Mr. Fluegel replied that his research revealed that it was done by the county just at the time of the incorporation of the Town. Mr. Ryffel added that he was involved in the process at the time and explained why it was granted. Part of the reason was that the EC zoning had not yet existed; more discussion took place with Mr. Ryffel providing more history to the topic. Mr. Cameron still was not clear as to why the business was granted the exception and Mr. Fluegel stressed that the bifurcation of property is what creates the conflict. He said that the Coastal Construction Control Line only controls construction and does not determine zoning rights seaward. Then the Town created this zoning district that splits properties in two and further restricts property rights without clearly acknowledging what rights existed there. Mr. Fluegel admitted that this is a very "unique" situation, confused by zoning issues and unclear property rights.

Ms. Kay asked for clarification about bifurcation in the Town as compared to other areas. Mr. Fluegel said that in most towns the zoning is the same all the way from the upland parcel to the water line and he pointed out the EC area on a map, adding that the rights of use change as one walks toward the gulf.

Ms. Shamp passed out some documents for members to review while she spoke (attached) and read from it a quote by Mr. Stewart. She discussed certain pages, which she said summarized what she and Ms. Kay learned from a presentation last week regarding the Bert Harris Act, with regard to property rights. Specifically, she referred to pg. 6, item #5, which deals with litigation procedures and stipulates that "a property owner must file a claim within 1 year of the action which impacted the property." Ms. Shamp said that this is what guided her to form her opinion that the LDC is clear in regulating COP in the EC zone. She added that the 3 properties that are currently non-conforming have been so for so long, it would be difficult to say that they have no rights whatsoever to continue. She feels that the LDC currently provides sufficient regulations to restrict COP in EC zone and current regulations should be enforced accordingly. Ms. Shamp also commented that with all the

changes that are impacting safety and other issues on the island, it is not the time to change these regulations. She continued to point out the portions of her report where she did considerable research and listed relevant sections of the LDC and other legal references for discussion by the LPA. In her report, pg. 9 talks about "non-conforming" establishments with regard to alcohol and expansion and points out that those establishments cannot expand. In addition, she cited Alcohol 1264G "Expansion of the Area Designated for a Permit," which she said is specific with regard to alcohol, and it says "expansion of the area designated for permit cannot be expanded without a new application for alcohol permit..." Ms. Shamp read additional restrictions from that section (see report) and opined that there is "plenty of constraint here" to support that existing ones cannot expand into the EC zone.

Ms. Shamp continued to read and explain more of her report for the members while citing all of the regulations she highlighted and gathered from various sections of the LDC and the LDC which are important to discussion of this topic by the LPA. Based on her research and findings, she opined that the LDC already regulates this topic without the need for any changes, especially when changes may result in legal ramifications, reminding the group that "once it is done, it's done" and it cannot be "undone" so decisions must be seriously considered. She supports the outright prohibition of COP.

Mr. Ryffel commented that he thought he read something that said the county parks would be selling alcoholic beverages and Ms. Shamp agreed that she read that they have the right to do so but they are interested in having "alcohol events" at facilities in the parks. He commended Ms. Shamp for her obvious hard work in preparing the document and all of the work she has done.

Short recess at 10:12 AM. Reconvened at 10:20 AM.

Mr. Fluegel felt that the LPA was leaning towards forwarding a resolution to Council to memorialize their thoughts on prohibition and said there is also a need to bring forth staff's recommendation as a regulatory approach. He asked if the LPA is willing to delve into the regulatory perspective or just focus on prohibition. Ms. Shamp said that she was under the impression that Council was looking for a recommendation as to whether the LPA wanted to do anything further or leave it as it stands. Mr. Ryffel said that if the LPA sends a recommendation forward without a clear understanding of what's next, they may not have any other opportunity to review it again. Ms. Shamp said that the LPA must get it back for a second chance. Mr. Fluegel said his opinion is that this needs to be dealt with within the scope of the LDC and staff must bring forward their recommendations in all scenarios. He added that he sees the biggest problem now is the existing 2 establishments that the Town has no zoning control over since there are no rules in the LDC acknowledging their rights. The third establishment had a special exception that included terms and conditions that at least gave some control but the other 2 have no restrictions and this is very troublesome.

Ms. Shamp asked if the Town has had any conversations with the establishments

regarding their responsibilities regarding safety, etc. Mr. Ryffel interjected that the Town needs to first define exactly what the situation is with the 2 businesses and what their restrictions are as recorded now. Ms. Shamp agreed that they are spending considerable time discussing this when they don't have all of the facts and information needed. Ms. Kay also agreed and feels that this decision should not be arrived at too quickly or haphazardly as once the change is made, it sticks. Mr. Fluegel brought up a certain video company coming onto the beach, at the invitation of a liquor-licensed business, as an example of lack of zoning and enforcement control. He said they can do this again, even after being warned and asked not to. Ms. Shamp pointed out that they could be charged and Mr. Fluegel was quick to point out that they would then just pay the \$250.00 fine, say "thanks" and do it again. Ms. Shamp added that there are other sections that could be applied; for instance Sec. 34-1264(i)1, states that *"revocation of their alcohol permit is allowed with 1c, "repeated violation of any Town ordinance at the location within 12 (inaudible) period preceding the revocation hearing..."* She said there are sign and many other regulations that can be enforced to constantly address the problems and threaten their licenses. Mr. Fluegel commented that he is understanding the LPA to be saying "leave the 3 alone," but "if I have no Town zoning approval on it, I have no right of revocation" and no rules to go to the state to take the license. He said there is no rule to be broken but Mr. Kakatsch said "that they don't have authority to start it in the first place." Mr. Fluegel asked "how does that relate to the alcohol license...if they invite the video company out there, how does that relate?" There was a comment that "that activity is enhanced with alcohol" and Mr. Fluegel agreed although he still insisted that there is still no "regulatory framework" to establish the Town's rights. He said there is no tie between the Special Events permit and the alcohol license. Ms. Shamp opined that "maybe that's the spot you make the change" because it's a small change, not expanding the COP into the EC zone, it is making a regulation more enforceable. More discussion ensued here with arguments from both sides. Mr. Fluegel said that they still need to address the zoning of alcohol issue. Ms. Miller opined that the biggest question now is whether or not the 2 "grandfathered" were ever legal and admits that she never come across a situation like this wherein businesses were allowed to operate for years with no regulation and then suddenly expected to follow certain rules. Again, Ms. Kay asked if they should be finding that information first, to see if they've ever "been legal," but Mr. Fluegel replied that he had found no supporting information so far.

Mr. Kakatsch said he would like to see the total prohibition of alcohol on the beach and that the existing 3 be given "a way out." He said that last Friday he sat on the beach behind the Mermaid and counted 19 people from 4-6:00PM with either alcoholic beverages in their hands or "something in a brown bag, assumed to be alcohol." He feels that enforcement of this, especially in the Times Square area, is impossible, especially since learning from some of those people that they had not purchased their drinks on the beach. His point was that the problem goes beyond just the businesses selling the alcohol on the beach and the only way to control it at all is to totally restrict it altogether.

Mr. Cameron said that they are charged with and need to give Mr. Fluegel and staff "something to enforce" that makes sense. He is in agreement with total prohibition.

Ms. Shamp asked what the legal ramifications would be if they find no proof that the 2 businesses are "legal" and they now decide to force compliance, having allowed them to operate all this time without rules. Ms. Miller said it is a lengthy process but they look to the state to see what they have in their files for the properties.

Mr. Fluegel reminded the members that staff is still expected to bring forth regulatory recommendations even if the LPA supports total prohibition. He said that Mr. Ryffel's idea is a good one and encouraged them to discuss that approach. He asked that they consider taking prohibition out of the picture and thinking about how they would deal with this from a regulatory perspective, since Council needs to see their opinions and the options. Ms. Kay argued that "this is back to square #1...this is where we were when you came up with that Administrative Approval" and said every time they meet about this, "we say prohibit and you say we want regulations." Mr. Fluegel replied "you have your opinion and I have mine." Ms. Kay respected that but said she feels he is telling the LPA that no matter what they decide, prohibition is not going to happen; therefore they must come up with regulations that will make the Council happy. Mr. Fluegel said "that's your opinion; my opinion is my job is to give Town Council the best options available..."

Mr. Kakatsch asked for clarification of the options they were given; #1 is outright prohibition of all COP in EC. Mr. Fluegel asked how many other establishments would or could possibly want the same thing that the 3 existing have. Mr. Fluegel replied that this would depend on what is stated is eligible to get it. Mr. Kakatsch said his concern is not as much the 3 places that already have this privilege but more the dozen or so other businesses that have restrictions and want the same deal. More discussion ensued and Ms. Miller summarized that the LPA can still philosophically be opposed to the expansion but if they want to have any input before it's drafted, they need to come up with something.

Mr. Ryffel said that one of the most important things to do is find out the status of the 2 or 3 existing properties. He said that he has about an hour's worth of ideas to discuss as options but the attorney was not able to stay for the whole discussion. They wanted to have a short overview but Mr. Ryffel said he needs to present the entire package he put together. They decided to allow him to begin and get as far as they can before Ms. Miller had to leave.

The documents were included in the LPA member's packets and they were referred to. Mr. Ryffel read from an email he had sent to Mr. Fluegel (attached) which relates to the rest of his documents. He continued and told the members to refer to their copies that has no strike-thrus and underlines. He said gave 2 options: 1a, 1b and 1c, which he said address COP in different areas of the Town and basically allow consumption without sales, service, tables, etc. anywhere, except 1 of the options.

Mr. Ryffel said that 1a applies to the Time Square area and allows COP *"on the beach... up to 10' landward of the interface between the wet and dry sand," which takes the place of the "within 50' ft. of mean high tide."* The next point states *"alcohol must be purchased at the existing bar(s) to be consumed on the beach; there will be no sales, wait staff, tables or carts...on the beach."* The alternative would allow COP in the Times Square area, but it would allow the sales, wait staff, etc.

Mr. Ryffel said that 1b talks about businesses outside the TS area with existing COPs and not including any whose COPs were approved as part of a planned development. These places would need to seek a special exception; *"alcohol would be purchased at an existing bar to be consumed on the beach up to 10' landward of the interface between the wet and dry sand; there will be no sales, wait staff, tables or carts...on the beach."*

Mr. Ryffel's option 1c does refer to those granted under planned development, directing those people to get an amendment to their previously approved plans. He option#2 covers all locations with existing COPs and states that *"any facility on the beachfront with an existing COP license...alcohol may be consumed on the beach owned by the business or property up to 10' landward of the interface between the wet and dry sand; all purchases must be made from the existing bars on the property and may be consumed on the beach, there will be no sales, wait staff, tables or carts...on the beach."* He added that now the "wet and dry sand interface" is about 300' out due to renourishment so this may need to be changed.

Mr. Fluegel approves of the suggestions by Mr. Ryffel but Ms. Shamp asked how it would work with the ATF's enforcement. Mr. Fluegel said they have addressed that already and ATF's stand is that they will enforce by the premise's license but the zoning area would be addressed by area and enforceable locally. Discussion ensued about this.

Mr. Cameron asked which applies, the property owner line or the EC line. Mr. Fluegel agreed that this is something that needs to be defined since renourishment is taking place.

Ms. Miller opined that the best way to address this is first forming a resolution after the public hearing for whatever regulations they compose; this would be a 2 part resolution with the first part to stipulate that expansion should not go into the EC and the second, the LPA's recommendations with respect to the draft. Mr. Fluegel said he needs to stick to a timeframe but there were comments about not rushing and getting the work done, with time to have the public involved.

Ms. Shamp asked for public comment on COP. Mr. Lee Melsick said that this is a dramatic change to the beach and asked them not to be swayed by things like Mr. Fluegel's staffing problems and timelines. He said the LPA tried to do all of this in 2009 but they were rejected by Council and told to leave it alone. He pleaded with them to take their time and continue to investigate the facts and make the same good-

sense decisions they've made in the past. He pointed out that this important issue is being rushed to get it all done in the summer when many of the island residents are not here to give their input, adding that this is "convenient for the politicians who want to push this thing through..."

Public comment closed.

B. EAR Discussion

Ms. Ekblad showed slides and gave her presentation about this item, giving details about how and why this is required by the Dept. of Economic Affairs.

There is a survey being distributed via the website, hand outs and hopefully some mailings. There is advertising being done and all of the information will be collected and evaluated. Ms. Ekblad gave a few statistics received as a result of the surveys collected so far: 86% of respondents own the unit they stay in at the beach; 94% of them have lived on the island longer than a year; the top 3 components for "livability" on the beach were small business incentives, bike paths and a vibrant/active downtown area; top 3 responses for the type of transportation people may use in the future were bike paths, sidewalks and the trolley; other responses were also discussed (see surveys).

Mr. Ryffel referred back to the COP discussion and asked what if there was a referendum when many residents are not here now. This information will be included for the next meeting since the attorney has left.

V. ADJOURN AS LPA AND RECONVENE AS THE HPB

Motion: Mr. Ryffel moved to adjourn as LPA and Reconvene as HPB.

Seconded by Mr. Kakatsch;

Vote: Motion passed 5-0.

The last meeting for the HAC did not have a quorum so not much was done. She said that 47 homes were identified by the county in the Comp Plan as eligible for the designation.

A. Smith Cottage

June 23 will be the presentation for this property.

Motion: Mr. Ryffel moved to adjourn as HPB and Reconvene as the LPA.

Seconded by Mr. Kakatsch;

Vote: Motion passed 5-0

VI. ADJOURN AS HPB AND RECONVENE AS THE LPA

Meeting was reconvened at 12:14PM, with the same members still present.

VII. LPA MEMBER ITEMS AND REPORTS

Ms. Kay asked about having an LPA attorney who they are able to just call with questions when needed. She also said she is "very frustrated" about going before the Council with LPA decisions because they do get notes on all of the LPA discussions and decisions and she feels that they don't regard the LPA's input as important to their decisions.

Mr. Kakatsch agreed and said he has similar feelings, adding that the LPA needs to do what is right for the families on the beach and not just what is important to the businesses. He wanted the record to reflect that he "think(s) we're in for trouble" if we open this thing up.

Ms. Shamp agreed with Ms. Kay in the need for constant communication and would like to have a separate attorney for certain items.

VIII. LPA ATTORNEY ITEMS

Ms. Miller left earlier.

IX. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Mr. Fluegel briefly discussed the progress on the Seafarer's demolition but said there is no indication of what comes next, but there is a development agreement. He said the LPA will be in the loop on any changes since anything that will be done will require amendments.

Ms. Kay asked about the short-term rental issue. Mr. Fluegel said it will go back in June for a second reading of the ordinance; he gave brief explanation of the details.

Mr. Fluegel also agrees with the communication opinions of the members and said that it has been very challenging for staff to have to deal with so much that has gone unattended for too many years. He reminded them that their input is critical if this COP change is passed.

**X. LPA ACTION LIST REVIEW
Resolutions to Town Council**

- Ms. Shamp commented on the Merlo CPD and said that this was particularly upsetting to her. She said that the Council passed this and granted the applicant more things than they even asked for. She expressed her frustration in the Council's decisions in situations like this and can't understand why they do some of the things they do.
- Connecticut St. –TBD

Future Work Activities

- LDC 613-14 10-255 Storm Water-TBD
- Post-disaster reconstruction/recovery**-TBD; Ms. Miller
- IPMC (code enforcement clean-up) possibly July-all LPA
- COP ordinance
- Residential rent ordinance-June 20th
**Members expressed frustration that this item has been on the agenda for about 4 years and they still have no plans.
- Beach Raking Ordinance-Aug.

Mr. Ryffel again reminded Mr. Fluegel to communicate to the Council that the COP issue cannot be dealt with in a shortened timeframe and cannot be taken lightly. Mr. Fluegel remained adamant that he has staffing and time management issues and cannot wait much longer for some action from the LPA. They continued to argue about the topic.

Mr. Kakatsch asked if there was anyone on the staff to write grants and Mr. Fluegel said he and Ms. Ekblad have experience at this but it's still a time management problem so they will try to get to this, too.

XI. ADJOURNMENT

Motion: Mr. Cameron moved to adjourn.

Seconded by Ms. Kay;

Vote: Motion passes 5-0.

Meeting adjourned at 12:56 PM. Next meeting July 12, 2011 at 9:00 AM.

Adopted _____ with/without changes. Motion by _____
(DATE)

Vote: _____ Signature: _____

- End of document